ORAL ARGUMENT SCHEDULED FOR NOVEMBER 13, 2015

In the United States Court of Appeals for the District of Columbia Circuit

No. 14-1249

SIERRA CLUB,
Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

ON PETITION FOR REVIEW OF ORDERS OF THE
FEDERAL ENERGY REGULATORY COMMISSION

BRIEF OF RESPONDENT FEDERAL ENERGY REGULATORY COMMISSION

Max Minzner
General Counsel

Robert H. Solomon
Solicitor

Karin L. Larson
Attorney

For Respondent
Federal Energy Regulatory
Commission
Washington, D.C. 20426

Final Brief: September 30, 2015

CIRCUIT RULE 28(a)(1) CERTIFICATE

A. Parties: All parties and intervenors appearing before this Court are identified in Petitioner's brief.

B. Rulings Under Review:

1. Order Amending Section 3 Authorization, *Sabine Pass Liquefaction, LLC*, 146 FERC ¶ 61,117 (Feb. 20, 2014) ("Amending Order"), R. 11, JA 254; and

2. Order Denying Rehearing, *Sabine Pass Liquefaction, LLC*, 148 FERC ¶ 61,200 (Sept. 18, 2014) ("Rehearing Order"), R. 15, JA 277.

C. Related Cases: This case has not previously been before this Court or any other court. Three related cases within the meaning of D.C. Cir. R. 28(a)(1)(C) are currently pending in this Court: *Sierra Club v. FERC*, D.C. Cir. No. 14-1275, which is scheduled for argument on the same date and before the same panel as this case; *Earth Reports, Inc. (d/b/a/ Patuxent Riverkeeper), et al. v. FERC*, No. 15-1127, where Sierra Club is one of the petitioners; and *Sierra Club v. FERC*, No. 15-1133.

/s/ Karin L. Larson
Karin L. Larson

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GLOSSARY

2012 Orders	*Sabine Pass Liquefaction, LLC*, 139 FERC ¶ 61,039, JA 318, *reh'g denied*, 140 FERC ¶ 61,076 (2012), JA 375
2012 Project	Sabine Pass's project approved by FERC in the 2012 Orders, which encompasses the construction and operation of four LNG liquefaction trains and other facilities necessary to export LNG
Amending Order	*Sabine Pass Liquefaction, LLC*, 146 FERC ¶ 61,117 (Feb. 20, 2014), R. 11, JA 254
Br.	Petitioner's opening brief
Commission or FERC	Federal Energy Regulatory Commission
Department	Department of Energy
Environmental Assessment	Environmental assessment report issued on January 24, 2014 by FERC for Sabine Pass's application to amend the peak production capacity in the challenged proceeding, R. 10, JA 246
LNG	Liquefied natural gas
NEPA	National Environmental Policy Act, 42 U.S.C. §§ 4321, *et seq.*
NGA	Natural Gas Act, 15 U.S.C. §§ 717, *et seq.*
P	The internal paragraph number within a FERC order
Rehearing Order	*Sabine Pass Liquefaction, LLC*, 148 FERC ¶ 61,200 (Sept. 18, 2014), R. 15, JA 277
Sabine Pass	The owners and operators of the Sabine Pass LNG facility: Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P.
Sabine Pass Facility	The existing LNG terminal and liquefaction facilities located in Cameron Parish, Louisiana

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BRIEF OF RESPONDENT FEDERAL ENERGY REGULATORY COMMISSION

STATEMENT OF THE ISSUE

In 2012, the Federal Energy Regulatory Commission ("Commission" or "FERC"), after conducting an extensive environmental review, authorized the siting, construction, and operation of facilities to convert natural gas into liquefied natural gas ("LNG") at an existing LNG terminal. In 2014, in the challenged orders, the Commission made a single amendment to its 2012 authorization. Specifically, the Commission increased the liquefaction facilities' stated maximum capacity for producing LNG to reflect the facilities' actual, as-built design capability under optimal operating conditions. The Commission did not authorize

additional construction or physical modification to the liquefaction facilities. The question presented on appeal is:

Assuming jurisdiction, whether the Commission's environmental review of this limited amendment satisfied the National Environmental Policy Act's ("NEPA") procedural requirements.

STATUTORY AND REGULATORY PROVISIONS

Pertinent statutes and regulations are contained in the Addendum.

COUNTER-STATEMENT OF JURISDICTION

This Court does not have jurisdiction over Sierra Club's claims, as the alleged injuries set forth in declarations attached to its opening brief do not satisfy minimum constitutional standing requirements. This is because the challenged Commission orders do not authorize additional construction, and do not necessarily increase the amount of time that the previously authorized liquefaction facilities will operate because much or all of the higher production capability is achieved through engineering and operating efficiencies, thereby rendering the alleged environmental injuries speculative or possibly non-existent. *See infra* Part II of the Argument. In addition, Sierra Club waived its cumulative impacts argument by failing to raise it to the Commission as required by Natural Gas Act ("NGA") section 19(b), 15 U.S.C. § 717r(b), *see infra* pp. 41-42.

INTRODUCTION

This case involves the fourth, and most limited in scope, in a series of five agency proceedings involving the Sabine Pass LNG, L.P. and Sabine Pass Liquefaction, LLC (together "Sabine Pass") LNG facility. *See infra* p. 12 (enumerating proceedings). The challenged orders amend the stated maximum production capacity of a previously-approved project at the existing Sabine Pass LNG terminal. Specifically, in 2012, the Commission authorized Sabine Pass to construct and operate liquefaction facilities for the export of natural gas from the existing Sabine Pass LNG terminal in Cameron Parish, Louisiana. *See Sabine Pass Liquefaction, LLC*, 139 FERC ¶ 61,039 ("2012 Authorizing Order") (JA 318), *reh'g denied*, 140 FERC ¶ 61,076 (2012) ("2012 Rehearing Order") (JA 375) (together the "2012 Orders").[1] The 2012 Orders authorized Sabine Pass to operate these liquefaction facilities, consisting of four liquefaction trains (Trains 1-4),[2] for a maximum production capacity (known at that time) of 2.2 billion cubic feet per day of natural gas ("2012 Project").

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[1] "R." refers to a record item. "JA" refers to the Joint Appendix page number. "P" refers to the internal paragraph number within a FERC order. "Br." refers to Petitioner's opening brief.

[2] An LNG "train" refers to the compressor facility used to convert natural gas into LNG. The three-step process to convert natural gas into LNG includes: gas treatment (to remove impurities and water), gas compression, and refrigeration. After treatment, purified gas goes to the compressor trains to be transformed from gas into liquid by refrigeration to approximately -256°F.

On October 25, 2013, Sabine Pass filed an application with the Commission requesting that FERC amend the 2012 Orders to reflect the actual design capacity of Trains 1-4 under optimal operating conditions (the "Amendment"). This increase in LNG production capacity required no construction or change to the previously-authorized facilities. In the orders on review, after conducting an environmental assessment, the Commission approved the proposed Amendment. *Sabine Pass Liquefaction, LLC*, 146 FERC ¶ 61,117 (Feb. 20, 2014) ("Amending Order"), R. 11, JA 254; *Sabine Pass Liquefaction, LLC*, 148 FERC ¶ 61,200 (Sept. 18, 2014) ("Rehearing Order"), R. 15, JA 277.

Sierra Club's real objection appears to be to the 2012 Project, which, unlike this case, entailed the construction of LNG infrastructure. *See, e.g.*, Br. 33 (referencing the "Commission's decision to authorize the construction of export facilities costing billions of dollars"); *id.* at 32-33 ("Commission is approving infrastructure"); *id.* at 44 ("when an Agency approves infrastructure"); and *id.* at 45 ("the Commission's approval of export facilities"). Having failed to appeal the 2012 Orders, Sierra Club now seeks to litigate arguments previously raised and addressed in FERC's 2012 Orders. Specifically, Sierra Club presses claims that FERC failed: (1) to consider the indirect impacts arising from induced natural gas production and increased use of coal in lieu of natural gas; and (2) to include in the cumulative impacts analysis other LNG export projects. The Commission

addressed and rejected these contentions in the 2012 Orders and again in the challenged 2014 orders. *See* 2012 Authorizing Order at PP 94-99, JA 348-50; 2012 Rehearing Order at PP 8-22, JA 377-83; Amending Order at PP 15, 19, JA 260, 261-62; and Rehearing Order at PP 10-13, JA 282-84.

STATEMENT OF FACTS

I. STATUTORY AND REGULATORY BACKGROUND

A. The Licensing Of LNG Projects Under The Natural Gas Act

The Commission has "exclusive jurisdiction over the transportation and sale of natural gas in interstate commerce for resale." *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 300-01 (1988). Section 3 of the Act, 15 U.S.C. § 717b, prohibits the exportation of any natural gas from the United States to a foreign country without "first having secured an order of the Commission authorizing" such exportation. Congress transferred the regulatory functions of NGA section 3 to the Department of Energy (the "Department") in 1977. *See* 42 U.S.C. § 7151(b) (Department of Energy Organization Act).

The Department subsequently delegated back to the Commission the limited authority under NGA section 3(e), 15 U.S.C. § 717b(e), to approve the siting, construction, and operation of import and export facilities. *See* DOE Delegation Order No. 00-044.00A (effective May 16, 2006) (renewing delegation to the Commission authority over the construction and operation of LNG facilities). The

Department retains, under section 3(a)-(c) of the NGA, exclusive authority over the export of natural gas as a commodity, including the responsibility to determine whether the exportation of natural gas will "not be inconsistent with the public interest." 15 U.S.C. § 717b(a). Notwithstanding Sierra Club's contentions (Br. 3), it is the Department, not FERC, that is "authorizing additional exports" and thus decides whether to "connect hitherto isolated United States natural gas supplies with the international market for that gas." Br. 30.

The Department has developed multiple reports to inform its NGA Section 3 public interest determination for requests to export LNG. These reports include the two-part 2012 LNG Export Study. *See 2012 LNG Export Study*, 77 Fed. Reg. 73,627 (Dec. 11, 2012).[3] The Department's LNG Export Study includes: (1) the U.S. Energy Information Administration's 2012 study entitled *Effect of Increased Natural Gas Exports on Domestic Energy Markets* ("EIA Study");[4] and (2) NERA Economic Consulting's analysis entitled *Macroeconomic Impacts of Increased LNG Exports from the United States* ("NERA Study").[5] *See id.* at 73,628. As the

[3] A copy of the Department's Notice of Availability of 2012 LNG Export Study is included in the Addendum to this brief.

[4] The Energy Information Administration's 2012 Study is available at http://energy.gov/sites/prod/files/2013/04/f0/fe_eia_lng.pdf.

[5] The NERA Study is available at http://energy.gov/sites/prod/files/2013/04/f0/nera_lng_report.pdf.

Department explained, the predicate for the 2012 LNG Export Study was Sabine Pass's application for authorization from the Department to export gas that would be produced by the 2012 Project. *Id.*

The EIA Study is a "general economic forecast" over twenty-five years, applying four export demand scenarios. *See* 2012 Rehearing Order at P 14, JA 380 (describing EIA Study). As the Department explained, the scenarios it set to be used in the study were not forecasts. *See* 77 Fed. Reg. at 73,628. "[I]nstead, these scenarios were established to set a wide range of potential LNG export scenarios, as assessed by [the Department] at that time." *Id.* The EIA Study projected that under the export scenarios domestic gas production and prices would increase. EIA Study at 6. However, the EIA Study cautioned that projections involving energy markets over the long term are "highly uncertain and subject to many events that cannot be foreseen, such as supply disruptions, policy changes, and technological breakthroughs." *Id.* at 3. Further, the EIA Study's projections are "not statements of what *will* happen but of what *might* happen, given the assumptions and methodologies used." *Id.* at ii (emphasis in original). The EIA Study also noted that "[t]he degree to which coal might be used in lieu of natural gas depends on what regulations are in-place that might restrict coal use." *Id.* at 12 n.7. Sierra Club highlights one such proposed regulation which would restrict coal use – the Environmental Protection Agency's proposed performance standards for

power plants. *See* Br. 29 (citing *Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units*, 79 Fed. Reg. 1,430 (Jan. 8, 2014)).

The second part of the 2012 LNG Export Study, the NERA Study, includes a "feasibility analysis of exporting the specified quantities of natural gas used in the EIA analysis." 77 Fed. Reg. at 73,628. The NERA Study concluded that the highest export-level scenarios and corresponding prices predicted by the EIA Study were "not likely." NERA Study at 9. The NERA Study also acknowledged "great uncertainties about how the U.S. natural gas market will evolve" noting that "[o]ne of the major uncertainties is the availability of shale gas in the United States." *Id.* at 111.

In 2014, the Department developed and published two environmental reports related to the export of LNG: (1) the *Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States* ("Environmental Addendum");[6] and (2) the *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States*

[6] *Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States*, 79 Fed. Reg. 48,132 (Aug. 15, 2014), available at http://www.energy.gov/sites/prod/files/2014/08/f18/Addendum.pdf.

("Greenhouse Gas Report").[7] The Environmental Addendum evaluated potential environmental impacts of unconventional natural gas exploration and production activities in the nation as a whole. 79 Fed. Reg. 48,132 (Aug. 15, 2014). However, the Environmental Addendum could not "meaningfully analyze the specific environmental impacts of [any additional natural gas] production," because the Department "lack[s] an understanding of where and when additional gas production will arise" and "the environmental impacts resulting from production activity . . . are not 'reasonably foreseeable' . . . ." Environmental Addendum at 2.

B. National Environmental Policy Act

The Commission's consideration of an LNG-related application triggers an environmental review under the National Environmental Policy Act. *See* 42 U.S.C. §§ 4321, *et seq.* "NEPA is a procedural statute; it 'does not mandate particular results, but simply prescribes the necessary process.'" *Minisink Residents for Envtl. Pres. and Safety v. FERC*, 762 F.3d 97, 111 (D.C. Cir. 2014) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)); *see also Dep't of Transp. v. Public Citizen*, 541 U.S. 752, 768 (2004) (same).

[7] *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States*, 79 Fed. Reg. 32,260 (June 4, 2014), available at http://energy.gov/sites/prod/files/2014/05/f16/Life%20Cycle%20GHG%20Perspective%20Report.pdf.

"NEPA imposes only procedural requirements on federal agencies with a particular focus on requiring agencies to undertake analyses of the environmental impact of their proposals and actions." *Public Citizen*, 541 U.S. at 756-57 (quoting *Robertson*, 490 U.S. at 349-50); *see also Theodore Roosevelt Conservation P'ship v. Salazar*, 616 F.3d 497, 503 (D.C. Cir. 2010) (NEPA ensures a "fully informed and well-considered decision, not necessarily the best decision"). Accordingly, an agency must take a "hard look" at "the environmental impact of its action[]." *Minisink*, 762 F.3d at 111; *see also Balt. Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 97 (1983) (same).

Regulations implementing NEPA require federal agencies to consider the environmental effects of a proposed action by preparing either an environmental assessment, if supported by a finding of no significant impact, or a more comprehensive environmental impact statement. *See* 40 C.F.R. § 1501.4 (detailing when to prepare an environmental impact statement versus an environmental assessment). An environmental assessment is a concise public document that "[b]riefly provide[s] sufficient evidence and analysis for determining whether to prepare an environmental impact statement." *Pub. Citizen*, 541 U.S. at 757-58 (quoting 40 C.F.R. § 1508.9(a)); *see also Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 Fed. Reg. 18,026 (Mar. 23, 1981) (environmental assessments are generally 10-15 pages in length).

An environmental assessment need not contain long descriptions or detailed data which the agency may have gathered. Rather, it should contain a brief discussion of the need for the proposal, alternatives to the proposal, the environmental impacts of the proposed action and alternatives, and a list of agencies and persons consulted. 40 C.F.R. § 1508.9(b). If, pursuant to the environmental assessment, an agency determines that an environmental impact statement is not required, it must issue a "finding of no significant impact," which briefly presents the reasons why the proposed agency action will not have a significant impact on the human environment. *See* 40 C.F.R. §§ 1501.4(e), 1508.13. Once the agency issues a finding of no significant impact, it has fulfilled NEPA's documentation requirements. *See Taxpayers of Mich. Against Casinos v. Norton*, 433 F.3d 852, 857 (D.C. Cir. 2006) (citing 40 C.F.R. §§ 1501.4(e), 1508.9, 1508.13).

II. THE SABINE PASS FACILITY

The existing, Commission-approved Sabine Pass Facility, located near the Sabine Pass Channel in Cameron Parish, Louisiana, was originally designed to import up to 2.6 billion cubic feet per day of foreign-sourced LNG, and to store and regasify that LNG for delivery to United States markets. *See* 2012 Authorizing Order at P 2, JA 318-19. Sabine Pass began import operations in 2008. *Id.* at n.4, JA 319. It has been the subject of a series of five FERC

proceedings over the past decade as the LNG facility has expanded and evolved to provide both import and export services, as follows:

1. 2004/2006: FERC authorized in two phases the siting, construction, and operation of the Sabine Pass Terminal as an LNG import, storage, and vaporization facility including a marine terminal capable of handling 300 ships per year. Phase I, which created 2.6 billion cubic feet per day of send-out capacity, was placed in commercial operation in 2008. Phase II, which provided an additional 1.4 billion cubic feet per day of capacity began operating in 2009. The environmental review for the Phase I and Phase II facilities included an environmental impact statement and an environmental assessment, respectively. *See Sabine Pass LNG, L.P.*, 109 FERC ¶ 61,324 (2004) (Phase I), and *Sabine Pass LNG, L.P.*, 115 FERC ¶ 61,330 (2006) (Phase II), JA 287.

2. 2009: FERC, after conducting an environmental assessment, amended the prior authorization to permit Sabine Pass to operate the Terminal for the additional purpose of exporting foreign-sourced LNG that had previously been imported into and stored at the Terminal. *See Sabine Pass LNG, L.P.*, 127 FERC ¶ 61,200 (2009) (authorizing modifications to facilitate export).

3. 2012: FERC authorized the siting, construction, and operation of the 2012 Project (i.e. Liquefaction Trains 1-4). The Commission's environmental review for this liquefaction project included a 161-page environmental assessment (excluding appendices). *See* 2012 Orders, JA 318-73; 375-88.

4. 2014 (the contested proceeding): FERC, after conducting an environmental assessment, amended its 2012 authorization to reflect the actual maximum production capacity of Trains 1-4. *See* Amending Order at P 1, JA 254.

5. 2015: FERC authorized the siting, construction, and operation of two additional liquefaction trains (Trains 5 and 6), increasing the facility's LNG production capacity by 1.38 billion cubic feet per day. The Commission's environmental review included a 204-page environmental assessment (excluding appendices). *See Sabine Pass Liquefaction Expansion, LLC*, 151 FERC ¶ 61,012, *reh'g denied*, 151 FERC ¶ 61,253 (2015). (Sierra Club has 60 days from the date the rehearing order issued (until August 24, 2015) to file a petition for review of these orders.)

This case concerns the least impactful of the five proceedings – the fourth proceeding – involving a limited amendment to the Commission's authorization issued in the 2012 Orders.

The Commission conducted an extensive environmental review of the 2012 Project, spanning 18 months, and resulting in a detailed 161-page environmental assessment which considered the 2012 Project's direct, indirect, and cumulative impacts on environmental resources. 2012 Authorizing Order at PP 33, 47, JA 330, 335; *see also id.* at P 45, JA 334 ("[e]valuating the broad range of environmental issues in Sabine Pass' resource reports and the mitigation to reduce the project's effects below the level of significance warranted a relatively lengthy [environmental assessment]"). Ultimately, the Commission concluded that, subject to compliance with numerous environmental conditions and mitigation measures, the 2012 Project would result in no significant environmental impacts. *Id.* at PP 29-30, JA 329. The 2012 Project allows Sabine Pass to operate simultaneously, with no physical limitation, as a bi-directional LNG facility for both export and import service. *See id.* at P 6, JA 321. The bi-directional service allows Sabine Pass customers to import or export LNG in response to "unexpected shifts in domestic natural gas market conditions." *Id.* at P 10, JA 322.

Sierra Club actively participated in the 2012 Project proceeding challenging, among other things, the need to consider the indirect impacts of exporting LNG;

e.g., induced natural gas production. The Commission addressed Sierra Club's challenges and denied Sierra Club's request for rehearing. *See* 2012 Rehearing Order at PP 9-22, JA 378-83. Sierra Club opted to not appeal the 2012 Orders.

III. THE CHALLENGED 2014 PROCEEDING

The challenged 2014 proceeding refines the 2012 authorization. Specifically, Sabine Pass applied for a limited amendment to the 2012 Authorizing Order to increase the stated maximum LNG production capacity of Trains 1-4 from the originally authorized 2.2 billion cubic feet per day to 2.76 billion cubic feet per day to reflect the 2012 Project's as-built maximum LNG production capacity.[8] Amending Order at P 1, JA 254. The originally-authorized production capacity represented the nameplate capacity for the 2012 Project, which is the expected average annual output of the liquefaction trains over their anticipated life based on conservative assumptions regarding the operating parameters. *See* Application of Sabine Pass for Limited Amendment to Authorization Granted, FERC Docket No. CP14-12-000, at 4, 6 (Oct. 25, 2013), R. 1, JA 13, 15. Sabine Pass sought to amend the authorized output to reflect the 2012 Project's maximum capacity that

[8] Sierra Club annualizes the production capacity. Br. 5, 21. But Sierra Club's claim that the Amendment will increase the gas exported by roughly 25 percent per year (Br. 21) is misleading. The maximum production capacity represents the amount of additional LNG that can be squeezed out of Trains 1-4 on a particular day under optimal conditions including cooler ambient air temperatures. *See* Rehearing Order at P 7, JA 281. But this maximum production level is not sustainable throughout the year. *Id.*

could be produced under optimal conditions (i.e., cooler ambient temperatures and enhanced operations and maintenance processes). *See id.* at 4-5, 7, JA 13-14, 16. The increased production capacity requires no construction or physical modification to the facilities. *See id.* at 5-6, JA 14-15.

A. The Commission's Environmental Review

Given the limited scope of the Amendment, underscored by the fact that there is no new construction or modification to the previously-authorized 2012 facilities, the Commission determined that the Amendment would not affect most environmental resources; e.g., wetlands, forested lands, wildlife, soils, etc. *See* Environmental Assessment Report, FERC Docket No. CP14-12-000, at 5 (Jan. 24, 2014), R. 10, JA 250 ("Environmental Assessment"). Accordingly, the Commission's environmental review focused on the sole potential environmental effect from the additional production capability: air quality. *See* EA 5-7, JA 250-52. The Environmental Assessment also addressed cumulative impacts, alternatives, and induced additional natural gas production. *See* EA 4-5, JA 249-50.

B. The Amending Order

On February 20, 2014, the Commission issued an order amending the 2012 Authorizing Order to reflect the 2012 Project's actual potential peak production capability. Amending Order at P 1, JA 254. The Commission recognized that an

accurate calculation of the maximum or peak capacity under optimal operating conditions may not be possible at the time of an initial application for construction. *Id.* at P 12, JA 258. The Commission found that the Amendment would not require an increase in the number of LNG shipping vessels, dredging to the area to accommodate larger vessels, modification of the berthing area, or changes to the loading/unloading rate for the ships. *Id.* at P 18, JA 261. Further, the Commission found that operating at the maximum design capacity would not alter any of the design parameters used in the air quality modeling analysis for the 2012 Project. *Id.* at P 16, JA 260. The Commission addressed all of Sierra Club's comments, including the issues raised in this appeal: indirect impacts from induced natural gas production (*id.* at PP 14-15, JA 259-60); increased natural gas prices (*id.* at P 10, JA 258); and cumulative impacts (*id.* at P 19, JA 261-62).

C. The Rehearing Order

Sierra Club was the only party to seek rehearing of the Amending Order. *See* Motion for Rehearing, Docket No. CP14-12-000 (Mar. 24, 2014) ("Rehearing Request"), R. 13, JA 266. On rehearing, the Commission rejected Sierra Club's challenges regarding FERC's compliance with NEPA. *See* Rehearing Order at P 1, JA 277. As relevant to this appeal, the Commission affirmed its determination in the Amending Order (and its 2012 Orders) that environmental effects associated with induced natural gas production are neither causally related nor reasonably

foreseeable. *Id.* at P 13, JA 283-84. Moreover, the Commission rejected Sierra Club's claim that Commission's environmental analysis must consider the economic effects – alleged increase in natural gas prices and the resulting increase in domestic coal consumption – of the Department of Energy approving the export of additional LNG supplies. *Id.* at PP 12-13, JA 283-84. Last, the Commission rejected Sierra Club's rehearing argument that the cumulative impacts analysis was deficient for failing to consider Sabine Pass's Train 5 and 6 expansion project and a nearby pipeline project. *Id.* at PP 10-11, JA 282-83.

IV. THE DEPARTMENT OF ENERGY'S EXPORT AUTHORIZATION

Contrary to Sierra Club's repeated assertions, the Commission has not expanded Sabine Pass's "export capacity." Br. 36, 40. It is within the Department of Energy's exclusive jurisdiction to determine whether the export of additional LNG produced at Sabine Pass is consistent with the public interest. *See supra* p. 6 To that end, after the Commission issued the Amending Order, Sabine Pass sought from the Department export authorization for the incremental capacity. *See Sabine Pass Liquefaction, LLC*, DOE/FE Docket No. 14-92-LNG, DOE/FE Order No. 3593 (Feb. 12, 2015) (Order authorizing export of 0.56 billion cubic feet per day of LNG to free trade agreement nations); *see also Sabine Pass Liquefaction, LLC*, Application for Authorization to Export to Non-Free Trade Agreement Nations, DOE/FE Docket No. 15-63-LNG (Apr. 20, 2015) (application pending).

In its pending export application, Sabine Pass notes that the Department's regulations implementing NEPA provide for a categorical exclusion for authorization requests that do not involve any new construction or modifications. *Id.* (citing 40 C.F.R. § 1508.4).[9] Accordingly, the procedural posture of Sabine Pass's export authorization proceeding at the Department is significantly different than the Department's export authorization proceedings for Freeport LNG, which is the subject of the related Sierra Club appeal in D.C. Cir. No. 14-1275. Unlike Sabine Pass, Freeport LNG sought export authorization from the Department concurrently with its application to the Commission for approval to construct and operate export facilities at the Freeport LNG terminal. Because the Freeport LNG project requires construction of new LNG facilities, its export application did not fall within the Department's categorical exclusion from NEPA review. The Department actively participated in the FERC's NEPA review of the Freeport LNG project as a cooperating agency. In contrast, in the Sabine Pass Amendment proceeding, the Commission did not request that the Department participate in FERC's environmental review because no new export facilities were being

[9] Unlike the Department's regulations, the Commission's regulations implementing NEPA do not provide a categorical exclusion for any type of LNG import or export authorizations, even those that do not require new construction or modification. *See* 18 C.F.R. § 380.4 (Commission regulation listing actions for which neither an environmental assessment nor environmental impact statement need be prepared).

proposed. *See* Rehearing Order at P 14, JA 284-85 (the Department was a cooperating agency in FERC's environmental assessment of the 2012 Project); *see also Sabine Pass Liquefaction Expansion, LLC*, 151 FERC ¶ 61,012, at P 59 (2015) (the Department is a cooperating agency in FERC's environmental review of the Trains 5 and 6 expansion project).

SUMMARY OF ARGUMENT

Sierra Club belatedly seeks to litigate issues the Commission fully addressed in 2012 when the agency approved the siting, construction, and operation of new liquefaction facilities at the Sabine Pass Terminal. Sierra Club now tries to tie its claims regarding induced natural gas production and coal consumption to a 2014 FERC proceeding that involves no construction, no new facilities, and no physical changes to the existing FERC-approved LNG infrastructure. Sierra Club has not demonstrated that a member has suffered or will suffer any real or immediate harm from the limited 2014 amendment justifying standing to contest the Commission's 2014 Orders.

Assuming jurisdiction, the Commission satisfied its statutory responsibilities under the National Environmental Policy Act to take a "hard look" at the environmental consequences of adjusting the stated maximum production capacity of the previously-approved Sabine Pass liquefaction facilities. Future natural gas development production activities, in the Commission's informed judgment, are

not a causally-related effect of the Amendment. Moreover, the impacts of any such production activities are not reasonably foreseeable. The Commission reasonably declined to discuss indirect, speculative impacts that would not meaningfully inform its environmental review of the Amendment. The Commission similarly declined to guess whether and to what extent the export of an incrementally larger volume of LNG from Sabine Pass – an issue under the purview of the Department of Energy – may impact natural gas prices to a degree that there is a ripple effect in the use of coal as a fuel source for electric generation in lieu of natural gas.

Sierra Club waived its right to argue on appeal that the Commission's cumulative impacts analysis must consider LNG projects scattered throughout the United States by failing to raise this objection first to the agency. Regardless, this claim is contrary to the requirements and purpose of NEPA. The scope of an agency's cumulative impact analysis under NEPA is properly limited to other projects in the same area impacted by the action under review.

With respect to other LNG projects at Sabine Pass (the subject of a 2015 FERC proceeding), the Commission made an informed and reasoned decision that because the 2014 Amendment – a change to the stated peak production capacity – results in no environmental impacts, there are no impacts to "add" to other projects' impacts to formulate a cumulative impacts analysis. Accordingly, no

purpose would be served by requiring the Commission to detail the impacts of future projects at the Sabine Pass facility.

ARGUMENT

I. STANDARD OF REVIEW

The Court reviews the substance of Commission actions under the Administrative Procedure Act, overturning disputed orders only if they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). The Administrative Procedure Act's arbitrary and capricious standard applies to challenges under the National Environmental Policy Act. *See Nevada v. Dep't of Energy*, 457 F.3d 78, 87 (D.C. Cir. 2006). When the Court reviews Commission action taken "under NEPA, the court's role is simply to ensure that the agency has adequately considered and disclosed the environmental impact of its actions and that its decision is not arbitrary or capricious." *Nat'l Comm. for the New River, Inc. v. FERC*, 373 F.3d 1323, 1327 (D.C. Cir. 2004) (denying appeal of FERC pipeline certificate decision) (quoting *Balt. Gas & Elec.*, 462 U.S. at 97-98); *see also, e.g.*, *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1322 (D.C. Cir. 2015) (noting that FERC's NEPA obligations are "essentially procedural") (quoting *Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 558 (1978)). The Commission's

findings of fact, if supported by substantial evidence, are conclusive. *See Nat'l Comm. for the New River*, 373 F.3d at 1327.

Agency action taken pursuant to NEPA is entitled to a high degree of deference. *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 377-78 (1989). This Court evaluates agency compliance with NEPA under a "rule of reason" standard. *Theodore Roosevelt Conservation P'ship v. Salazar*, 661 F.3d 66, 75 (D.C. Cir. 2011) (citing *Nevada*, 457 F.3d at 93); *see also Myersville*, 783 F.3d at 1322 (same). This Court consistently declines to "flyspeck" an agency's environmental analysis, looking for "any deficiency no matter how minor." *Myersville*, 783 F.3d at 1322 (quoting *Nevada*, 457 F.3d at 93; and citing *Minisink*, 762 F.3d at 112). Thus, "[a]s long as the agency's decision is 'fully informed' and 'well-considered,' it is entitled to judicial deference and a reviewing court should not substitute its own policy judgment." *Natural Res. Def. Council, Inc. v. Hodel*, 865 F.2d 288, 294 (D.C. Cir. 1988) (quoting *N. Slope Borough v. Andrus*, 642 F.2d 589, 599 (D.C. Cir. 1980)). *See also Robertson*, 490 U.S. at 350-51 (NEPA merely prohibits uninformed – rather than unwise – agency action).

II. SIERRA CLUB HAS NOT ESTABLISHED STANDING

Sierra Club does not satisfy the minimum constitutional standing requirements. To establish Article III standing, a petitioner must present an injury that is concrete, particularized, and actual or imminent; fairly traceable to the

agency's challenged action; and redressable by a favorable ruling. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *see also Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977) (explaining associational standing). Any future "threatened injury must be certainly impending to constitute injury in fact[;] allegations of possible future injury are not sufficient." *Clapper v. Amnesty Int'l USA*, 133 S.Ct. 1138, 1147 (2013) (quotations omitted). Sierra Club fails the first prong: injury.

Sierra Club's assertion of a procedural injury, a violation of a NEPA requirement, does not diminish its burden to produce evidence of an imminent and specific harm. *See Summers v. Earth Island Inst.*, 555 U.S. 488, 497 (2009) ("the requirement of injury in fact is a hard floor of Article III jurisdiction that cannot be removed by statute"); *see also Ctr. for Biological Diversity v. Dept. of Interior*, 563 F.3d 466, 479 (D.C. Cir. 2009) (under a procedural standing theory, petitioner must show that the alleged NEPA violation will cause an essential injury to the petitioner's own interest); *Nat'l Comm. for the New River, Inc. v. FERC*, 433 F.3d 830, 833 (D.C. Cir. 2005) ("To have standing to challenge [pipeline] route alignments, [petitioner] must demonstrate that its members have suffered, or will suffer, specific environmental and aesthetic harms as a result of the route realignments themselves.").

Neither of Sierra Club's declarants asserts a concrete or imminent injury related to the Commission's amendment to the stated peak production capacity of the pre-existing 2012 Project. Both declarants, Mr. Paul and Ms. Iles, generally aver that they recreate in the vicinity of the existing, operating Sabine Pass terminal and that they will suffer negative impacts from the alleged increase in operations at the terminal and increased shipping traffic. *See* Paul Dec. at PP 5, 7; Iles Dec. at PP 5, 7. These bare assertions are not enough.

While a recreational interest is a cognizable interest for purpose of standing, "[t]his interest . . . will not suffice on its own 'without any description of concrete plans, or indeed even any specification of when' the plaintiff will be deprived" of its interest. *Ctr. for Biological Diversity*, 563 F.3d at 479 (quoting *Lujan*, 504 U.S. at 564). In *Center for Biological Diversity*, the Court found the petitioners' member affidavits, which detailed definite dates in the near future to observe animals that would be impacted by the government's offshore drilling lease program, demonstrated a sufficiently immediate and definite inquiry. *Id.* Unlike the declarants in the cases cited by Sierra Club (Br. 35-36), neither Mr. Paul nor Ms. Iles has shown concrete plans to return to the area around the Sabine Pass terminal in the future. *See Ass'n of Battery Recyclers, Inc. v. EPA*, 716 F.3d 667, 672-73 (D.C. Cir. 2013) (petitioner members live or work in close proximity to challenged smelter facility and have reduced their time outdoors because of

pollution from smelter); *WildEarth Guardians v. Jewell*, 738 F.3d 298, 306-07 (D.C. Cir. 2013) (finding injury in fact based on members' affidavits which attested to "specific plans to visit the [affected] area regularly for recreational purposes"); and *Lemon v. Geren*, 514 F.3d 1312, 1315 (D.C. Cir. 2008) (standing established where plaintiffs live near where the federal action would occur and would feel the environmental effects of that action).

Mr. Paul appears to no longer fish near the Sabine Pass terminal since moving his boat to Galveston, Texas. *See* Paul Dec. at P 7 (noting past concerns over negative impacts he "faced"). Similarly, of the two beaches Ms. Iles mentions, she stopped visiting the one closest to the Sabine Pass terminal, Sea Rim State Park, which is approximately 11 miles southwest of the terminal, after Hurricane Ike hit Texas in 2008. *See* Iles Dec. at P 5. The other beach Ms. Iles visits, Gilchrist, is over 40 miles southwest of the Terminal, which is not "near" the terminal such that any impacts would be felt. *See Del. Dep't of Natural Res. and Envtl. Control v. EPA*, 785 F.3d 1, 10 (D.C. Cir. 2015) (Delaware lacked standing to challenge exemption from agency's emission regulations for generators located in remote areas where Delaware offered no evidence that the exempt generators were located near enough to the state to pose a threat to its air quality).

Moreover, the alleged injuries – unsubstantiated fears from increased risk of barge or boat collision, health effects from increases in air pollution, and

diminished use of waterways from increased vessel traffic – are neither concrete nor imminent. *See* Paul Dec. at PP 5, 8-9; Iles Dec. at PP 7-8. First, the record shows that the Amendment will not increase the number of LNG ships or vessel traffic at Sabine Pass. *See* Amending Order at P 18, JA 261 (no increase in number of vessels or changes to the loading/unloading rate for the vessels); EA at 6, JA 251 (same).

Second, the Declarants' identically-worded, shared "concern[] about the *potential* increase in air pollution" is speculative. Paul Dec. at P 8; Iles Dec at P 8 (emphasis added). "Allegations of possible future injury" are inadequate to establish constitutional standing. *Whitmore v. Arkansas,* 495 U.S. 149, 158 (1990). Much, if not all, of the incremental production capacity is attributable to increased efficiencies, not increased operations. *See* Sabine Pass Answer at 5 (Nov. 29, 2013), R. 7, JA 236; *see also* Sabine Pass, Supplemental Response to Nov. 13, 2013 Environmental Information Request at 1 (Dec. 31, 2013), R. 9, JA 243 (prior design optimization allows for more effective use of the power available and does not fundamentally change the operating characteristics or emissions of the gas turbines); *id.* at 2, JA 244 (no increase in fuel gas usage). In addition, any *potential* increase in air emissions would occur only in a "good year" if Sabine Pass is able to achieve possible maintenance efficiencies (resulting in fewer shutdowns) and when other favorable conditions, such as cooler ambient

temperatures, occur. *Id.* at 2, JA 244; *see also* Rehearing Order at P 7, JA 281 (increased production "achievable only under optimal operating conditions and not on a daily basis"). Regardless, the 2014 Amendment will not result in additional air emissions beyond the emission levels approved in the 2012 Orders. *See* Rehearing Order at P 7, JA 281.

The alleged injuries, whether related to feared boat collisions, increased vessel traffic, or the potential for increased air emissions, are at best speculative and thus are insufficient to support standing. *See NO Gas Pipeline v. FERC*, 756 F.3d 764, 768 (D.C. Cir. 2014) (alleged injury – harm from higher radon levels from gas that may be transported over the FERC-approved pipeline – too speculative to support standing); *Occidental Permian Ltd. v. FERC*, 673 F.3d 1024, 1026 (D.C. Cir. 2012) (petitioner's fear of a possible future rate increase not enough to show the requisite injury). Sierra Club is not without judicial redress, however, as: (1) it is presenting the same (or similar) issues to the Court in related proceedings concerning other LNG projects (Nos. 14-1275, 15-1127, and 15-1133); and (2) it has the ability to present the same or similar issue on review of the Commission's 2015 approval of the construction of additional liquefaction facilities at the Sabine Pass Terminal. *See supra* p. 12.

III. FERC'S FINDING OF NO SIGNIFICANT IMPACTS COMPLIES WITH NEPA AND IS FULLY SUPPORTED BY THE RECORD

The Commission did not, as Sierra Club argues, "refuse to consider," "blinker[] [its] analysis," "refuse[] to grapple with," "refuse[] to acknowledge," "refus[e] to examine," "blind itself," or "sweep[] under the rug" (*see* Br. 2, 20, 44, 45, 46, 47, 64, 66) any potential impact that would meaningfully inform the Commission's 2014 decision to amend the 2012 Authorizing Order. *See Public Citizen*, 541 U.S. at 767 (adequacy of scope of an environmental assessment "based on the usefulness of any new potential information to the decision-making process"). Consistent with NEPA, the Commission prepared the Environmental Assessment to determine whether amending the stated maximum production capacity to reflect the new liquefaction trains' actual capability (under optimal conditions) would have a significant impact on the environment. Given that the equipment for the 2012 Project, including the design changes and optimizations, had already been found to meet the public interest standard of NGA section 3 by the 2012 Orders, the breadth of the Environmental Assessment matches the scope of the action. *Compare* 2014 Amendment EA, JA 246-52 (seven pages), *with* Environmental Assessment for the 2012 Project (161 pages), *and* Environmental Assessment for the 2015 Trains 5 and 6 Expansion (204 pages).

Based on the Environmental Assessment, the Commission reasonably concluded that the minor regulatory act of amending the stated peak production

capacity of the 2012 Project – involving no construction or physical change to the facility – would not constitute a major federal action significantly affecting the quality of the human environment. Amending Order at P 20, JA 262; *see also Pub. Citizen v. Nat'l Hwy. Traffic Safety Admin.*, 848 F.2d 256, 266 (D.C. Cir. 1988) (agency's finding of no significant impact is entitled to deference).

Sierra Club disagrees and wants FERC to examine all potential impacts that might flow from the export of domestically produced LNG. Presumably, Sierra Club believes an exhaustive environmental assessment would help inform the policy question faced by the Department of Energy of the sensibility of exporting LNG. To that end, Sierra Club argues that the Amendment somehow thwarts the President's policy initiative to encourage the reduction of greenhouse gas emissions. *See* Br. 28-30, 31, 44, and 45 (discussing the Climate Action Plan).

But the export of LNG is not at issue here, nor is it an issue over which FERC has jurisdiction. *See supra* pp. 5-6 (explaining division of responsibility between the Department and the Commission). Moreover, unlike the environmental assessment for the 2012 Project, here the 2014 Environmental Assessment was not prepared in conjunction with a Department of Energy export authorization proceeding. Accordingly, the Environmental Assessment correctly tailored its analysis to the environmental impacts associated with a small change in

operation. *See Sierra Club v. Froehlke*, 486 F.2d 946, 951 (7th Cir. 1973) (NEPA does not require that "each problem be documented from every angle").

Last, to the extent Sierra Club effectively is challenging the Commission's environmental review and authorization of the 2012 Project, that challenge is an impermissible collateral attack on the 2012 Orders. A party cannot raise an issue on judicial review of later orders that belatedly challenges an earlier Commission decision that the party chose not to appeal. Such a "collateral attack" on an earlier, final order is impermissible. *See, e.g.*, *Sacramento Mun. Util. Dist. v. FERC*, 428 F.3d 294, 298-99 (D.C. Cir. 2005) (challenge to the validity of a tariff is an impermissible collateral attack on prior orders approving that tariff), and *La. Pub. Serv. Comm'n v. FERC*, 761 F.3d 540, 556 (5th Cir. 2014) (petition challenging issue arising from prior orders not before the court is an impermissible collateral attack). Sierra Club was a party in the 2012 agency proceeding (indeed, an active one) and chose not to appeal the Commission's 2012 Orders. *See supra* pp. 13-14. Whether it chooses to appeal the Commission's 2015 Orders (*see supra* p. 12) is its decision to make.

A. The Commission's Indirect Impacts Analysis Fully Complied With NEPA

Sierra Club argues that the Commission erred in excluding from its environmental analysis the indirect "impacts that exports would have on the domestic natural gas market – increased natural gas production, and increased use

of coal to generate electricity." Br. 26. Sierra Club's argument again assumes that the Commission has jurisdiction over the *export* of LNG; that authority belongs to the Department of Energy. *See supra* pp. 5-6. Nonetheless, the Commission fully addressed Sierra Club's argument in the 2012 Orders. Now, for a second time, the Commission found, based on its analysis of the same issue regarding the same facility in the 2012 Orders, that Sierra Club's claim of induced increases in gas production is neither sufficiently causally related to the 2014 Amendment nor reasonably foreseeable to warrant analysis. *See* Amending Order at P 15, JA 260 (issue "addressed in the 2012 Order"); Rehearing Order at P 13, JA 283 (issue "adequately" addressed in the 2012 Authorizing Order).

1. Induced Gas Production Is Not Reasonably Foreseeable

Indirect impacts "are caused by the action and are later in time or farther removed in distance, but are still *reasonably foreseeable*." 40 C.F.R. § 1508.8(b) (emphasis added). Impacts from any additional gas development that may occur because of the Amendment are not reasonably foreseeable so as to warrant the Commission's consideration in the Environmental Assessment. *See* Rehearing Order at P 13, JA 284; *see also* 2012 Rehearing Order at P 9, JA 378. "An impact is 'reasonably foreseeable' if it is 'sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.'" 2012

Authorizing Order at P 95, JA 348 (citing *City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005)).

Sierra Club continues to misstate the Commission's findings regarding foreseeability. *See* Br. 46-47 (claiming that FERC refused to acknowledge that additional gas production is foreseeable). The Commission clarified in the 2012 proceeding that it "did not conclude that it was not 'reasonably foreseeable' that the [2012 Project] would induce increased natural gas production." 2012 Rehearing Order at P 9, JA 378. Rather, the Commission found that with respect to both the 2012 Project and the 2014 Amendment: (1) it is "virtually impossible to estimate how much, if any, of the export volumes associated with the Liquefaction Project will come from existing or new shale gas production;" and (2) the "amount, timing and location of such development activity is simply unknowable at this time." 2012 Rehearing Order at P 9, JA 378; *see also* Amending Order at P 15, JA 260. Without knowing where, in what quantity, and under what circumstances additional gas production will arise, the environmental impacts resulting from such production activities are not "reasonably foreseeable" within the meaning of the NEPA regulations. *See City of Shoreacres*, 420 F.3d at 452 (not arbitrary to not consider effects of a future plan to dredge and deepen a shipping channel where plan was speculative and would take years to put into effect).

As the Commission explained, the Sabine Pass Terminal may receive natural gas from interconnecting pipeline systems that span from Texas to Illinois to Pennsylvania and New Jersey and cross multiple shale and conventional gas plays. 2012 Rehearing Order at P 10, JA 378. Given the interconnected nature of the interstate natural gas pipeline system that feeds the Sabine Pass Terminal, the location of possible production activity is too speculative to provide meaningful information. *See id*.; *see also* Amending Order at P 15, JA 260 (noting that no specific shale gas play is associated with the liquefaction project); Rehearing Order at P 13, JA 284 (same). As the Commission noted, its determination regarding the unforeseeability of the location and timing of gas development was consistent with its conclusion regarding a similar issue in *Central N.Y. Oil and Gas Company, LLC*, which was upheld on appeal by the Second Circuit. *See* 2012 Rehearing Order at PP 11-13, JA 379-80 (citing *Central New York Oil and Gas Co., LLC*, 137 FERC ¶ 61,121 (2011), *reh'g denied*, 138 FERC ¶ 61,104 (2012), *aff'd*, *Coal. for Responsible Growth and Res. Conservation v. FERC*, 485 Fed. App'x 472 (2d Cir. June 12, 2012) (unpublished opinion) (upholding FERC's conclusion that future Pennsylvania shale gas production was not reasonably foreseeable to warrant analysis in an environmental assessment for a proposed pipeline designed in part to transport Pennsylvania shale gas to market because, even though thousands of well permits had been issued, it was unknown if, or when, any of the gas wells would be

drilled)). Here, any induced gas development activities and the associated impacts are even "more attenuated" from the 2012 Project than in *Central New York*, in which the identified future development activities were in a relatively confined area. 2012 Rehearing Order at P 12, JA 379.

The boundless analysis sought by Sierra Club would require the Commission to engage in "speculative" analysis that would not meaningfully inform FERC's decision to amend the 2012 Project's peak production capacity. *See* 2012 Rehearing Order at P 10, JA 378; *see also Habitat Educ. Ctr. v. U.S. Forest Serv.*, 609 F.3d 897, 902 (7th Cir. 2010) (impacts that cannot be described with sufficient specificity to make its consideration meaningful need not be included in environmental impact statement). A virtually limitless impacts analysis is not supported by either of the two cases Sierra Club relies on: *New York v. Nuclear Regulatory Comm'n*, 681 F.3d 471 (D.C. Cir. 2012) (Br. 47, 49), and *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520 (8th Cir. 2003). *See* Br. 43, 48.

Contrary to Sierra Club's assertion (Br. 47), *New York* does not redefine "reasonably foreseeable" to mean any chance of occurring greater than zero. Reasonable foreseeability was not at issue in *New York*. That case involves a rulemaking by the Nuclear Regulatory Commission governing nuclear waste disposal sites. *New York*, 681 F.3d at 473. The Nuclear Commission identified

fires at the storage pools as an environmental risk of waste disposal and acknowledged that the risk of fires was neither remote nor speculative. *Id.* at 475, 480. But the Nuclear Commission then failed to consider the impacts from pool fires and instead summarily concluded that the risk of a fire was sufficiently low and did not pose a significant environmental threat. *Id.* at 475, 480. In contrast to FERC's conclusion here, the Nuclear Commission did not argue that the impacts from pool fires were not reasonably foreseeable. Rather the Nuclear Commission erroneously believed it did not have to consider known consequences of pool fires in its NEPA analysis. *Id.* at 482.

Sierra Club's second case, *Mid States*, is also distinguishable. In *Mid States*, the agency approved new railroad lines that it found would offer a "cheaper method to transport coal" from mines to coal-burning power plants and consequently would increase power plants' demand for coal. 345 F.3d at 533, 549-50. The Court found that the agency could project the amount of coal that would be transported and consequently burned. *Id.* at 549. But, despite the agency's earlier promise that it would "evaluat[e] the potential air quality impacts associated with the increased availability and utilization of coal," the agency ultimately refused to do so. *See id.* Unlike the agencies in *New York* and *Mid States*, here, the Commission found the "amount, timing and location" of possible additional gas production activities that might be attributed to the Amendment "unknowable."

2012 Rehearing Order at P 9, JA 378; *see also* Amending Order at P 15, JA 260 (no specific shale-gas play identified).

Sierra Club is correct that NEPA requires "reasonable forecasting." Br. 53-54 (quoting *Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Comm'n*, 481 F.2d 1079, 1092 (D.C. Cir. 1973)). However, NEPA does not require an agency to "engage in speculative analysis" or "to do the impractical, if not enough information is available to permit meaningful consideration." *N. Plains Res. Council v. Surface Transp. Bd.*, 668 F.3d 1067, 1078 (9th Cir. 2011); *see also Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1310 (D.C. Cir. 2014) (NEPA does not demand forecasting that is "not meaningfully possible"); *Fund for Animals v. Kempthorne*, 538 F.3d 124, 137 (2d Cir. 2008) (speculation in an environmental impact statement is not precluded, but the agency is not obliged to engage in endless hypothesizing as to remote possibilities); 2012 Rehearing Order at PP 21-22, JA 382-83 (distinguishing *Scientists' Institute*).

Sierra Club points to the Energy Information Administration's 2012 Study as guidance for predicting where, when, and in what amount induced production will occur. *See* Br. 31, 38, 40, 41, 48, 52, 55. But the EIA Study is merely a prediction based on hypotheticals. Although the EIA Study predicted that increased exports of domestic LNG will lead to increased domestic gas production, that prediction is tempered by the Study's caveat that projections involving energy

markets are "highly uncertain and subject to many events that cannot be foreseen, such as supply disruptions, policy changes, and technological breakthroughs." *See* 2012 Rehearing Order at P 14, JA 380 (quoting the 2012 EIA Study at 3).

As the Commission explained, the study's usefulness is limited. *Id.* The EIA Study makes general projections (which may be helpful to the Department of Energy in its export authorizations) that do not assist the Commission with estimating how much, if any, of Sabine Pass's export volumes will come from future natural gas production, much less more specific information on when, where and how future gas production that may be tied to Sabine Pass will ultimately occur. *Id.* That information remains "unknowable." As the Council for Environmental Quality instructed, the Commission instead focused on impacts that are truly meaningful. *See* 2012 Rehearing Order at P 13, n.17, JA 380 (citing *Considering Cumulative Effects Under the NEPA* at 8 (CEQ 1997)). There is nothing arbitrary about the Commission's reasoned conclusion that a discussion of potential impacts from future gas production activities (the extent of which are unknown) would not meaningfully contribute to the Commission's consideration of the Amendment. *See Coal. on Sensible Transp., Inc. v. Dole,* 826 F.2d 60, 66 (D.C. Cir. 1987) (Because the NEPA process "involves an almost endless series of judgment calls . . . [t]he line-drawing decisions . . . are vested in the agencies, not the courts.").

2. The Amendment Is Not The Legally Relevant Cause Of Additional Gas Production Throughout The United States

Sierra Club seeks review of impacts that are not "caused by," and are substantially removed from, the more efficient operation of the 2012 liquefaction facilities. *See* Amending Order at P 15, JA 260; *see also* 2012 Authorizing Order at P 96, JA 349 (additional gas development not an "effect" of the 2012 Project). An indirect impact must be "caused by" the proposed action. 40 C.F.R. § 1508.8(b) (defining "indirect effects"). The test to determine whether a particular effect is caused by the federal action is not a "but for" inquiry, but rather whether the federal action was the "legally relevant cause" of the effect. *See Public Citizen*, 541 U.S. at 769. In *Public Citizen*, the Supreme Court upheld the agency's decision not to consider in its environmental analysis for new safety regulations governing Mexican motor carriers – a precursor to re-opening the United States to Mexican truck traffic – the potential environmental impacts of an increased number of Mexican trucks on U.S. roads. *See id.* at 767-69. The Court agreed with the agency's finding that there was no reasonably close causal relationship between the increased number of trucks and the proposed safety regulations. *Id.* (noting that requiring the agency to consider broader effects would not provide "useful" information that would assist with informed decision-making).

Here, Sierra Club argues that FERC's Environmental Assessment must consider the effects of the Department of Energy's authorization of the export of

additional quantities of LNG. *See* Br. 40-57; *see also* Rehearing Order at P 12, JA 283. But, "[i]t is doubtful that an environmental effect may be considered as proximately caused by the action of a particular federal regulator if that effect is directly caused by the action of another government entity over which the regulator has no control." *City of Shoreacres*, 420 F.3d at 452 (discussing *Public Citizen*). Accordingly, like the federal action at issue in *Public Citizen*, amending the stated peak production capacity of the Sabine Pass liquefaction facilities is not the legally relevant cause of any future incremental increases in natural gas production.

In addition, the Commission explained that there is no record evidence that any increase in natural gas production is directly associated with the 2014 Amendment. *See* Amending Order at P 15, JA 260. The Commission noted that neither the 2012 Project nor the Amendment "depend[s] on additional shale gas production, which may occur for reasons unrelated to the project . . ." *Id.*; *see also* 2012 Authorizing Order at P 98, JA 349 ("overall increase in nationwide [gas] production . . . may occur for a variety of reasons").

The Commission affirmed its prior conclusion that the 2012 Project "did not depend on additional shale gas production" and that additional gas production "may occur for reasons unrelated to the project." Amending Order at P 15, JA 260. Addressing this same argument in the 2012 Orders, the Commission found no evidence that gas ultimately processed by the 2012 Project will come from future,

induced natural gas production as opposed to existing production. *See* 2012 Authorizing Order at P 98, JA 349; *see also Myersville*, 783 F.3d at 1326-27 (upholding FERC determination that although a pipeline project's excess capacity may be used to move gas to an LNG export project, the projects are "unrelated" for purposes of NEPA); *Morongo Band of Mission Indians v. FAA*, 161 F.3d 569 (9th Cir. 1998) (environmental analysis need not discuss growth-inducing impact – increased air traffic – of an airport improvement project where project was implemented to deal with existing problems). Consistent with applicable case law, the Commission reasonably concluded that future unidentified natural gas development activities throughout the eastern half of the United States are not sufficiently causally-related to the Amendment to warrant consideration of the potential impacts stemming from such gas production.

3. Potential Economic Impacts From The Effect Of LNG Exports On Domestic Gas Prices Need Not Be Examined By FERC

For the reasons discussed *supra* pp. 30-40, Sierra Club's argument related to potential impacts LNG exports may have on domestic gas prices is even more attenuated than its induced gas production claim. Sierra Club points to no evidence to support its claim that FERC's approval of a small potential increase in LNG production capacity will drive natural gas prices up so high that gas-fired power plants will convert to coal.

Moreover, secondary impacts (such as a hypothetical increase in coal use, in lieu of natural gas) resulting from presumed elevated domestic gas prices relate to the authorization of the export of LNG, not the operation of LNG infrastructure. Such economic impacts are thus outside the scope of the Commission's shared authority with the Department of Energy. *See* Rehearing Order at P 13, JA 283-84. Further, Sierra Club's claim that "generally applicable" economics make increased gas prices and consumption of coal "eminently foreseeable" is unsupported by the cited case. *See* Br. 40-41 (citing *Airlines for Am. v. Transp. Sec. Admin.*, 780 F.3d 409 (D.C. Cir. 2015)). The Court's holding in *Airlines for America* that an "injury is inferable from generally applicable economic principles" relates only to the Court's standing analysis. *See Airlines for Am.*, 780 F.3d at 411. Nothing in that case suggests that the Court's holding should be extended to determine compliance with NEPA – especially when anticipated coal consumption is subject to legislative, regulatory, and policy considerations beyond mere economics.

B. The Commission's Cumulative Impacts Analysis Is Reasonable

On appeal, Sierra Club argues for the first time that the Commission's cumulative impacts analysis violated NEPA by failing to analyze 12 other LNG export projects scattered across the United States. Br. 63-66. Section 19 of the Natural Gas Act prohibits a petitioner from raising on appeal an objection to a Commission order that it failed to "urge[] before the Commission in [an]

application for rehearing" and was specifically set forth in the rehearing request. 15 U.S.C. §§ 717r(a) and (b); *see also Columbia Gas Transmission Corp. v. FERC*, 477 F.3d 739, 741 (D.C. Cir. 2007) (Court strictly applies the NGA jurisdictional provisions). In its rehearing request, Sierra Club's cumulative impacts challenge only mentions one export project: the 2015 expansion project at Sabine Pass for Trains 5 and 6 (FERC Docket No. CP13-552). *See* Sierra Club Motion for Rehearing at 6-7, Docket No. CP14-12-000 (Mar. 24, 2014), R. 13, JA 271-72; *see also* Rehearing Order at P 11 n.22, JA 283 (noting that Sierra Club did not challenge on rehearing the exclusion of other Gulf Coast LNG projects from the cumulative impacts analysis); Amending Order at P 19, JA 261 (responding to Sierra Club argument that cumulative impacts analysis must include other applications for construction of additional infrastructure at Sabine Pass as well as other LNG projects in the Gulf Coast area). Thus, with respect to the other 11 LNG export projects listed in its brief (Br. 68 (Table 1)), Sierra Club waived its argument. *See Myersville*, 783 F.3d at 1310 (rejecting argument that petitioner failed to raise in its rehearing request).

Even assuming jurisdiction, Sierra Club's claim regarding the 11 unrelated export projects should be rejected as inconsistent with NEPA regulation and precedent. Sierra Club would have the Commission analyze cumulative impacts from other LNG projects as far flung as Oregon (Jordan Cove Energy Project) and

Maryland (Dominion Cove Point LNG), requiring FERC to define the project area as encompassing the entire United States. But NEPA does not require this. *See* Council on Environmental Quality, *Considering Cumulative Effects Under the National Environmental Policy Act* at 8 (Jan. 1997) (agencies not required to analyze the cumulative effects of an action on the universe).

The Council on Environmental Quality's regulations implementing NEPA define "cumulative impact" as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." 40 C.F.R. § 1508.7. The Council has interpreted its cumulative impact regulation as requiring an analysis of only actions that occur in the project area or the region of influence of the project being analyzed. *See Considering Cumulative Effects Under the National Environmental Policy Act* at 12-16.

Likewise, this Court defines cumulative impacts as the "measurement of the effect of the current project along with any other . . . actions *in the same geographic area*." *Taxpayers of Mich. Against Casinos v. Norton*, 433 F.3d at 864 (emphasis added) (citing 40 C.F.R. § 1508.7); *see also Grand Canyon Trust v. FAA*, 290 F.3d 339, 345 (D.C. Cir. 2002) (cumulative impacts analysis limited to actions that have had or are expected to have impacts in the same area that the proposed project will effect); *Kleppe*, 427 U.S. at 413-14 (NEPA does not require a

regional impact statement); *Minisink*, 762 F.3d at 113 & n.11 (upholding FERC's cumulative impacts analysis which declined to consider a future compressor project likely to be located 70 miles from compressor project under review). Had Sierra Club raised the issue, the Commission would have been correct to exclude from its cumulative impacts analysis any LNG project that was not within the same geographic area as where impacts, if any, from the Sabine Pass Amendment could be felt. *See* 2012 Authorizing Order at P 90, JA 346 (excluding from its cumulative impacts analysis for the 2012 Project two other LNG export projects in the Gulf Coast area because those projects were not within the same geographic area or air quality control region as the Sabine Pass Terminal).

With respect to Sabine Pass's Trains 5 and 6 expansion project, the Commission did not "blind" (Br. 64) itself to the expansion project. *See* Amending Order at P 19, JA 261-62 (acknowledging Trains 5 and 6 expansion project). Rather, as the Commission explained, there were no incremental impacts from the Amendment to assess. *Id.* The scope of a cumulative impacts analysis should relate to the magnitude of the environmental impacts of the proposed action. *See* Council on Environmental Quality, *Guidance on Consideration of Past Actions in Cumulative Effects Analysis* at 2-3 (2005). That is exactly what the Commission's Environmental Assessment reflects.

As the Commission explained, because amending the stated maximum production capacity involves no new construction or modification to the existing facilities, the amendment has no appreciable environmental impacts. *See* Rehearing Order at P 11, JA 282-83; *see also* EA at 5-7, JA 250-52. Specifically, the Commission found that the Amendment: (1) would not affect any environmental resource except air emissions; and (2) would not cause a change in total facility or marine air emissions above the 2012 authorization levels. EA at 5-6, JA 250-51. Because the Amendment creates no incremental impacts, there are no impacts to "add" to other projects in the project area. EA at 7, JA 252; *see also* 40 C.F.R. § 1508.7 (cumulative effects are those which result from the incremental impacts of the action at issue "when added" to other actions). Thus, the Commission reasonably concluded that because the Amendment will not contribute to any cumulative impacts, a detailed analysis of impacts from other projects is unnecessary. *See* Amending Order at P 19, JA 262; Rehearing Order at P 11, JA 283.

The scope of the Commission's cumulative impacts analysis is sufficient. *See Marsh*, 490 U.S. at 376-77 (agencies retain substantial discretion as to the extent of the inquiry for a cumulative impacts analysis); *see also Kleppe*, 427 U.S. at 412 (determination of the scope of a cumulative impacts analysis "is properly left to the informed discretion of the responsible agenc[y]" and is not to be

disturbed "[a]bsent a showing of arbitrary action"); *N. Slope Borough*, 642 F.2d at 601 (Court applies rule of reason to determine adequacy of cumulative impacts study).

CONCLUSION

The Commission's Environmental Assessment served its purpose – to provide sufficient evidence and analysis for determining whether to prepare a more extensive environmental impact statement or issue a finding of no significant impact regarding the Amendment. No more is required.

For the foregoing reasons, the petition for review, if not dismissed for lack of standing, should be denied and the Commission's orders should be affirmed.

Respectfully submitted,

Max Minzner
General Counsel

Robert H. Solomon
Solicitor

/s/ Karin L. Larson
Karin L. Larson
Attorney

Federal Energy Regulatory
Commission
Washington, D.C. 20426
Tel: (202) 502-8236
Fax: (202) 273-0901

FINAL BRIEF: September 30, 2015

Sierra Club v. FERC **Docket No. CP14-12-000**
D.C. Cir. No. 14-1249

CERTIFICATE OF COMPLIANCE

In accordance with Fed. R. App. P. 32(a)(7)(C)(i), I certify that this final brief of Respondent Federal Energy Regulatory Commission contains 10,571 words, not including the tables of contents and authorities, the glossary, the certificates of counsel, and the addendum.

/s/ Karin L. Larson
Karin L. Larson
Attorney

Federal Energy Regulatory
Commission
888 First Street, N.E.
Washington, D.C. 20426
Phone: 202-502-8236
Fax: 202-273-0901
E-mail: karin.larson@ferc.gov

September 30, 2015

ADDENDUM

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injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94–574, § 1, Oct. 21, 1976, 90 Stat. 2721.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(a).	June 11, 1946, ch. 324, § 10(a), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1976—Pub. L. 94–574 removed the defense of sovereign immunity as a bar to judicial review of Federal administrative action otherwise subject to judicial review.

§ 703. Form and venue of proceeding

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer. Except to the extent that prior, adequate, and exclusive opportunity for judicial review is provided by law, agency action is subject to judicial review in civil or criminal proceedings for judicial enforcement.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94–574, § 1, Oct. 21, 1976, 90 Stat. 2721.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(b).	June 11, 1946, ch. 324, § 10(b), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1976—Pub. L. 94–574 provided that if no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer as defendant.

§ 704. Actions reviewable

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review. A preliminary, procedural, or intermediate agency action or ruling not directly reviewable is subject to review on the review of the final agency action. Except as otherwise expressly required by statute, agency action otherwise final is final for the purposes of this section whether or not there has been presented or determined an application for a declaratory order, for any form of reconsideration, or, unless the agency otherwise requires by rule and provides that the action meanwhile is inoperative, for an appeal to superior agency authority.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(c).	June 11, 1946, ch. 324, § 10(c), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

§ 705. Relief pending review

When an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review. On such conditions as may be required and to the extent necessary to prevent irreparable injury, the reviewing court, including the court to which a case may be taken on appeal from or on application for certiorari or other writ to a reviewing court, may issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 393.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(d).	June 11, 1946, ch. 324, § 10(d), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 393.)

HISTORICAL AND REVISION NOTES

Derivation	*U.S. Code*	*Revised Statutes and Statutes at Large*
.....	5 U.S.C. 1009(e).	June 11, 1946, ch. 324, §10(e), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

ABBREVIATION OF RECORD

Pub. L. 85–791, Aug. 28, 1958, 72 Stat. 941, which authorized abbreviation of record on review or enforcement of orders of administrative agencies and review on the original papers, provided, in section 35 thereof, that: ''This Act [see Tables for classification] shall not be construed to repeal or modify any provision of the Administrative Procedure Act [see Short Title note set out preceding section 551 of this title].''

CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

§ 801. Congressional review

(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

(i) a copy of the rule;

(ii) a concise general statement relating to the rule, including whether it is a major rule; and

(iii) the proposed effective date of the rule.

(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General and make available to each House of Congress—

(i) a complete copy of the cost-benefit analysis of the rule, if any;

(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction in each House of the Congress by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

(3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of—

(A) the later of the date occurring 60 days after the date on which—

(i) the Congress receives the report submitted under paragraph (1); or

(ii) the rule is published in the Federal Register, if so published;

(B) if the Congress passes a joint resolution of disapproval described in section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—

(i) on which either House of Congress votes and fails to override the veto of the President; or

(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

(b)(1) A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule.

(2) A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.

(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of subsection (a)(3) may take effect, if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

(g) Authorization of appropriations

There is authorized to be appropriated to the Secretary to carry out the functions of the Office not to exceed $3,000,000 for fiscal year 1979, not to exceed $5,000,000 for fiscal year 1980, and not to exceed $6,000,000 for fiscal year 1981. Of the amounts so appropriated each fiscal year, not less than 50 percent shall be available for purposes of financial assistance under subsection (e) of this section.

(Pub. L. 95–91, title II, § 211, as added Pub. L. 95–619, title VI, § 641, Nov. 9, 1978, 92 Stat. 3284.)

§ 7142. National Atomic Museum

(a) Recognition and status

The museum operated by the Department of Energy and currently located at Building 20358 on Wyoming Avenue South near the corner of M street within the confines of the Kirtland Air Force Base (East), Albuquerque, New Mexico—

(1) is recognized as the official atomic museum of the United States;

(2) shall be known as the ''National Atomic Museum''; and

(3) shall have the sole right throughout the United States and its possessions to have and use the name ''National Atomic Museum''.

(b) Volunteers

(1) In operating the National Atomic Museum, the Secretary of Energy may—

(A) recruit, train, and accept the services of individuals without compensation as volunteers for, or in aid of, interpretive functions or other services or activities of and related to the museum; and

(B) provide to volunteers incidental expenses, such as nominal awards, uniforms, and transportation.

(2) Except as provided in paragraphs (3) and (4), a volunteer who is not otherwise employed by the Federal Government is not subject to laws relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits, because of service as a volunteer under this subsection.

(3) For purposes of chapter 171 of title 28 (relating to tort claims), a volunteer under this subsection is considered a Federal employee.

(4) For the purposes of subchapter I of chapter 81 of title 5 (relating to compensation for work-related injuries), a volunteer under this subsection is considered an employee of the United States.

(c) Authority

(1) In operating the National Atomic Museum, the Secretary of Energy may—

(A) accept and use donations of money or gifts pursuant to section 7262[1] of this title, if such gifts or money are designated in a written document signed by the donor as intended for the museum, and such donations or gifts are determined by the Secretary to be suitable and beneficial for use by the museum;

(B) operate a retail outlet on the premises of the museum for the purpose of selling or distributing mementos, replicas of memorabilia, literature, materials, and other items of an informative, educational, and tasteful nature relevant to the contents of the museum; and

(C) exhibit, perform, display, and publish information and materials concerning museum mementos, items, memorabilia, and replicas thereof in any media or place anywhere in the world, at reasonable fees or charges where feasible and appropriate, to substantially cover costs.

(2) The net proceeds of activities authorized under subparagraphs (B) and (C) of paragraph (1) may be used by the National Atomic Museum for activities of the museum.

(Pub. L. 102–190, div. C, title XXXI, § 3137, Dec. 5, 1991, 105 Stat. 1578; Pub. L. 103–35, title II, § 203(b)(4), May 31, 1993, 107 Stat. 102.)

REFERENCES IN TEXT

Section 7262 of this title, referred to in subsec. (c)(1)(A), was repealed by Pub. L. 104–206, title V, § 502, Sept. 30, 1996, 110 Stat. 3002.

CODIFICATION

Section was enacted as part of the National Defense Authorization Act for Fiscal Years 1992 and 1993, and not as part of the Department of Energy Organization Act which comprises this chapter.

AMENDMENTS

1993—Subsec. (c)(1). Pub. L. 103–35 struck out comma after ''Secretary of Energy'' in introductory provisions.

§ 7143. Office of Fissile Materials Disposition

(a) Establishment

There shall be within the Department an Office of Fissile Materials Disposition.

(b) Designation of head of Office

The Secretary shall designate the head of the Office. The head of the Office shall report to the Under Secretary.

(c) Responsibilities of head of Office

The head of the Office shall be responsible for all activities of the Department relating to the management, storage, and disposition of fissile materials from weapons and weapons systems that are excess to the national security needs of the United States.

(Pub. L. 95–91, title II, § 212, as added Pub. L. 103–337, div. C, title XXXI, § 3158(a), Oct. 5, 1994, 108 Stat. 3093.)

SUBCHAPTER III—TRANSFERS OF FUNCTIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 7301 of this title.

§ 7151. General transfers

(a) Except as otherwise provided in this chapter, there are transferred to, and vested in, the Secretary all of the functions vested by law in the Administrator of the Federal Energy Administration or the Federal Energy Administration, the Administrator of the Energy Research and Development Administration or the Energy Research and Development Administration; and

[1] See References in Text note below.

the functions vested by law in the officers and components of either such Administration.

(b) Except as provided in subchapter IV of this chapter, there are transferred to, and vested in, the Secretary the function of the Federal Power Commission, or of the members, officers, or components thereof. The Secretary may exercise any power described in section 7172(a)(2) of this title to the extent the Secretary determines such power to be necessary to the exercise of any function within his jurisdiction pursuant to the preceding sentence.

(Pub. L. 95–91, title III, § 301, Aug. 4, 1977, 91 Stat. 577.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this Act'', meaning Pub. L. 95–91, Aug. 4, 1977, 91 Stat. 565, as amended, known as the Department of Energy Organization Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Secretary of Energy, see Parts 1, 2, and 7 of Ex. Ord. No. 12656, Nov. 18, 1988, 53 F.R. 47491, set out as a note under section 5195 of this title.

EX. ORD. NO. 12038. TRANSFER OF CERTAIN FUNCTIONS TO SECRETARY OF ENERGY

Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, as amended by Ex. Ord. No. 12156, Sept. 10, 1979, 44 F.R. 53073, provided:

By virtue of the authority vested in me as President of the United States of America, in order to reflect the responsibilities of the Secretary of Energy for the performance of certain functions previously vested in other officers of the United States by direction of the President and subsequently transferred to the Secretary of Energy pursuant to the Department of Energy Organization Act (91 Stat. 565; 42 U.S.C. 7101 et seq.) it is hereby ordered as follows:

SECTION 1. *Functions of the Federal Energy Administration*. In accordance with the transfer of all functions vested by law in the Federal Energy Administration, or the Administrator thereof, to the Secretary of Energy pursuant to Section 301(a) of the Department of Energy Organization Act [subsec. (a) of this section], hereinafter referred to as the Act, the Executive Orders and Proclamations referred to in this Section, which conferred authority or responsibility upon the Administrator of the Federal Energy Administration, are amended as follows:

(a) Executive Order No. 11647, as amended [formerly set out as a note under 31 U.S.C. 501], relating to Federal Regional Councils, is further amended by deleting ''The Federal Energy Administration'' in Section 1(a)(10) and substituting ''The Department of Energy'', and by deleting ''The Deputy Administrator of the Federal Energy Administration'' in Section 3(a)(10) and substituting ''The Deputy Secretary of Energy''.

(b) Executive Order No. 11790 of June 25, 1974 [set out as a note under 15 U.S.C. 761], relating to the Federal Energy Administration Act of 1974, is amended by deleting ''Administrator of the Federal Energy Administration'' and ''Administrator'' wherever they appear in Sections 1 through 6 and substituting ''Secretary of Energy'' and ''Secretary'', respectively, and by deleting Section 7 through 10.

(c) Executive Order No. 11912, as amended [set out as a note under 42 U.S.C. 6201], relating to energy policy and conservation, and Proclamation No. 3279, as amended [set out as a note under 19 U.S.C. 1862], relating to imports of petroleum and petroleum products, are further amended by deleting ''Administrator of the Federal Energy Administration'', ''Federal Energy Administration'', and ''Administrator'' (when used in reference to the Federal Energy Administration) wherever those terms appear and by substituting ''Secretary of Energy'', ''Department of Energy'', and ''Secretary'', respectively, and by deleting ''the Administrator of Energy Research and Development'' in Section 10(a)(1) of Executive Order No. 11912, as amended.

SEC. 2. *Functions of the Federal Power Commission*. In accordance with the transfer of functions vested in the Federal Power Commission to the Secretary of Energy pursuant to Section 301(b) of the Act [subsec. (b) of this section], the Executive Orders referred to in this Section, which conferred authority or responsibility upon the Federal Power Commission, or Chairman thereof, are amended or modified as follows:

(a) Executive Order No. 10485 of September 3, 1953, [set out as a note under 15 U.S.C. 717b], relating to certain facilities at the borders of the United States is amended by deleting Section 2 thereof, and by deleting ''Federal Power Commission'' and ''Commission'' wherever those terms appear in Sections 1, 3 and 4 of such Order and substituting for each ''Secretary of Energy''.

(b) Executive Order No. 11969 of February 2, 1977 [formerly set out as a note under 15 U.S.C. 717], relating to the administration of the Emergency Natural Gas Act of 1977 [formerly set out as a note under 15 U.S.C. 717], is hereby amended by deleting the second sentence in Section 1, by deleting ''the Secretary of the Interior, the Administrator of the Federal Energy Administration, other members of the Federal Power Commission and in Section 2, and by deleting ''Chairman of the Federal Power Commission'' and ''Chairman'' wherever those terms appear and substituting therefor ''Secretary of Energy'' and ''Secretary'', respectively.

(c) Paragraph (2) of Section 3 of Executive Order No. 11331, as amended [formerly set out as a note under 42 U.S.C. 1962b], relating to the Pacific Northwest River Basins Commission, is hereby amended by deleting ''from each of the following Federal departments and agencies'' and substituting therefor ''to be appointed by the head of each of the following Executive agencies'', by deleting ''Federal Power Commission'' and substituting therefor ''Department of Energy'', and by deleting ''such member to be appointed by the head of each department or independent agency he represents,''.

SEC. 3. *Functions of the Secretary of the Interior*. In accordance with the transfer of certain functions vested in the Secretary of the Interior to the Secretary of Energy pursuant to Section 302 of the Act [42 U.S.C. 7152], the Executive Orders referred to in this Section, which conferred authority or responsibility on the Secretary of the Interior, are amended or modified as follows:

(a) Sections 1 and 4 of Executive Order No. 8526 of August 27, 1940, relating to functions of the Bonneville Power Administration, are hereby amended by substituting ''Secretary of Energy'' for ''Secretary of the Interior'', by adding ''of the Interior'' after ''Secretary'' in Sections 2 and 3, and by adding ''and the Secretary of Energy,'' after ''the Secretary of the Interior'' wherever the latter term appears in Section 5.

(b) Executive Order No. 11177 of September 16, 1964, relating to the Columbia River Treaty, is amended by deleting ''Secretary of the Interior'' and ''Department of the Interior'' wherever those terms appear and substituting therefor ''Secretary of Energy'' and ''Department of Energy'', respectively.

SEC. 4. *Functions of the Atomic Energy Commission and the Energy Research and Development Administration*.

(a) In accordance with the transfer of all functions vested by law in the Administrator of Energy Research and Development to the Secretary of Energy pursuant to Section 301(a) of the Act [subsec. (a) of this section] the Executive Orders referred to in this Section are amended or modified as follows:

(1) All current Executive Orders which refer to functions of the Atomic Energy Commission, including Executive Order No. 10127, as amended; Executive Order No. 10865, as amended [set out as a note under 50 U.S.C.

435]; Executive Order No. 10899 of December 9, 1960 [set out as a note under 42 U.S.C. 2162]; Executive Order No. 11057 of December 18, 1962 [set out as a note under 42 U.S.C. 2162]; Executive Order No. 11477 of August 7, 1969 [set out as a note under 42 U.S.C. 2187]; Executive Order No. 11752 of December 17, 1973 [formerly set out as a note under 42 U.S.C. 4331]; and Executive Order No. 11761 of January 17, 1974 [formerly set out as a note under 20 U.S.C. 1221]; are modified to provide that all such functions shall be exercised by (1) the Secretary of Energy to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Administrator of Energy Research and Development pursuant to the Energy Organization Act of 1974 (Public Law 93–438; 88 Stat. 1233) [42 U.S.C. 5801 et seq.], and (2) the Nuclear Regulatory Commission to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Commission by the Energy Reorganization Act of 1974 [42 U.S.C. 5801 et seq.].

(2) Executive Order No. 11652, as amended [formerly set out as a note under 50 U.S.C. 435], relating to the classification of national security matters, is further amended by substituting ''Department of Energy'' for ''Energy Research and Development Administration'' in Sections 2(A), 7(A) and 8 and by deleting ''Federal Power Commission'' in Section 2(B)(3).

(3) Executive Order No. 11902 of February 2, 1976 [formerly set out as a note under 42 U.S.C. 5841], relating to export licensing policy for nuclear materials and equipment, is amended by substituting ''the Secretary of Energy'' for ''the Administrator of the United States Energy Research and Development Administration, hereinafter referred to as the Administrator'' in Section 1(b) and for the ''Administrator'' in Sections 2 and 3.

(4) Executive Order No. 11905, as amended, [formerly set out as a note under 50 U.S.C. 401], relating to foreign intelligence activities, is further amended by deleting ''Energy Research and Development Administration'', ''Administrator or the Energy Research and Development Administration'', and ''ERDA'' wherever those terms appear and substituting ''Department of Energy'', ''Secretary of Energy'', and ''DOE'' respectively.

(5) Section 3(2) of each of the following Executive Orders is amended by substituting ''Department of Energy'' for ''Energy Research and Development Administration'':

(i) Executive Order No. 11345, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Great Lakes River Basin Commission.

(ii) Executive Order No. 11371, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the New England River Basin Commission.

(iii) Executive Order No. 11578, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Ohio River Basin Commission.

(iv) Executive Order No. 11658, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Missouri River Basin Commission.

(v) Executive Order No. 11659, as amended [formerly set out as a note under 42 U.S.C. 1962b], establishing the Mississippi River Basin Commission.

SEC. 5. *Special Provisions Relating to Emergency Preparedness and Mobilization Functions.*

(a) Executive Order No. 10480, as amended [formerly set out as a note under 50 App. U.S.C. 2153], is further amended by adding thereto the following new Sections:

''Sec. 609. Effective October 1, 1977, the Secretary of Energy shall exercise all authority and discharge all responsibility herein delegated to or conferred upon (a) the Atomic Energy Commission, and (b) with respect to petroleum, gas, solid fuels and electric power, upon the Secretary of the Interior.

''Sec. 610. Whenever the Administrator of General Services believes that the functions of an Executive agency have been modified pursuant to law in such manner as to require the amendment of any Executive order which relates to the assignment of emergency preparedness functions or the administration of mobilization programs, he shall promptly submit any proposals for the amendment of such Executive orders to the Director of the Office of Management and Budget in accordance with the provisions of Executive Order No. 11030, as amended [set out as a note under 44 U.S.C. 1505].

(b) Executive Order No. 11490, as amended [formerly set out as a note under 50 App. U.S.C. 2251], is further amended by adding thereto the following new section:

''Sec. 3016. Effective October 1, 1977, the Secretary of Energy shall exercise all authority and discharge all responsibility herein delegated to or conferred upon (a) the Federal Power Commission, (b) the Energy Research and Development Administration, and (c) with respect to electric power, petroleum, gas and solid fuels, upon the Department of the Interior.''.

SEC. 6. This Order shall be effective as of October 1, 1977, the effective date of the Department of Energy Organization Act [this chapter] pursuant to the provisions of section 901 [42 U.S.C. 7341] thereof and Executive Order No. 12009 of September 13, 1977 [formerly set out as a note under 42 U.S.C. 7341], and all actions taken by the Secretary of Energy on or after October 1, 1977, which are consistent with the foregoing provisions are entitled to full force and effect.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7159, 7174 of this title; title 15 section 3418; title 16 section 824a–4.

§ 7151a. Jurisdiction over matters transferred from Energy Research and Development Administration

Notwithstanding any other provision of law, jurisdiction over matters transferred to the Department of Energy from the Energy Research and Development Administration which on the effective date of such transfer were required by law, regulation, or administrative order to be made on the record after an opportunity for an agency hearing may be assigned to the Federal Energy Regulatory Commission or retained by the Secretary at his discretion.

(Pub. L. 95–238, title I, § 104(a), Feb. 25, 1978, 92 Stat. 53.)

CODIFICATION

Section was enacted as part of the Department of Energy Act of 1978—Civilian Applications, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7152. Transfers from Department of the Interior

(a) Functions relating to electric power

(1) There are transferred to, and vested in, the Secretary all functions of the Secretary of the Interior under section 825s of title 16, and all other functions of the Secretary of the Interior, and officers and components of the Department of the Interior, with respect to—

(A) the Southeastern Power Administration;

(B) the Southwestern Power Administration;

(C) the Alaska Power Administration;

(D) the Bonneville Power Administration including but not limited to the authority contained in the Bonneville Project Act of 1937 [16 U.S.C. 832 et seq.] and the Federal Columbia River Transmission System Act [16 U.S.C. 838 et seq.];

(E) the power marketing functions of the Bureau of Reclamation, including the con-

outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States.

(8) ''State commission'' means the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of natural gas to consumers within the State or municipality.

(9) ''Commission'' and ''Commissioner'' means the Federal Power Commission, and a member thereof, respectively.

(10) ''Vehicular natural gas'' means natural gas that is ultimately used as a fuel in a self-propelled vehicle.

(11) ''LNG terminal'' includes all natural gas facilities located onshore or in State waters that are used to receive, unload, load, store, transport, gasify, liquefy, or process natural gas that is imported to the United States from a foreign country, exported to a foreign country from the United States, or transported in interstate commerce by waterborne vessel, but does not include—

(A) waterborne vessels used to deliver natural gas to or from any such facility; or

(B) any pipeline or storage facility subject to the jurisdiction of the Commission under section 717f of this title.

(June 21, 1938, ch. 556, § 2, 52 Stat. 821; Pub. L. 102–486, title IV, § 404(a)(2), Oct. 24, 1992, 106 Stat. 2879; Pub. L. 109–58, title III, § 311(b), Aug. 8, 2005, 119 Stat. 685.)

AMENDMENTS

2005—Par. (11). Pub. L. 109–58 added par. (11).
1992—Par. (10). Pub. L. 102–486 added par. (10).

TERMINATION OF FEDERAL POWER COMMISSION; TRANSFER OF FUNCTIONS

Federal Power Commission terminated and functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a)(1), 7291, and 7293 of Title 42, The Public Health and Welfare.

§ 717b. Exportation or importation of natural gas; LNG terminals

(a) Mandatory authorization order

After six months from June 21, 1938, no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest. The Commission may by its order grant such application, in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing, and for good cause shown, make such supplemental order in the premises as it may find necessary or appropriate.

(b) Free trade agreements

With respect to natural gas which is imported into the United States from a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, and with respect to liquefied natural gas—

(1) the importation of such natural gas shall be treated as a ''first sale'' within the meaning of section 3301(21) of this title; and

(2) the Commission shall not, on the basis of national origin, treat any such imported natural gas on an unjust, unreasonable, unduly discriminatory, or preferential basis.

(c) Expedited application and approval process

For purposes of subsection (a) of this section, the importation of the natural gas referred to in subsection (b) of this section, or the exportation of natural gas to a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, shall be deemed to be consistent with the public interest, and applications for such importation or exportation shall be granted without modification or delay.

(d) Construction with other laws

Except as specifically provided in this chapter, nothing in this chapter affects the rights of States under—

(1) the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.);

(2) the Clean Air Act (42 U.S.C. 7401 et seq.); or

(3) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(e) LNG terminals

(1) The Commission shall have the exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG terminal. Except as specifically provided in this chapter, nothing in this chapter is intended to affect otherwise applicable law related to any Federal agency's authorities or responsibilities related to LNG terminals.

(2) Upon the filing of any application to site, construct, expand, or operate an LNG terminal, the Commission shall—

(A) set the matter for hearing;

(B) give reasonable notice of the hearing to all interested persons, including the State commission of the State in which the LNG terminal is located and, if not the same, the Governor-appointed State agency described in section 717b–1 of this title;

(C) decide the matter in accordance with this subsection; and

(D) issue or deny the appropriate order accordingly.

(3)(A) Except as provided in subparagraph (B), the Commission may approve an application described in paragraph (2), in whole or part, with such modifications and upon such terms and conditions as the Commission find[1] necessary or appropriate.

(B) Before January 1, 2015, the Commission shall not—

(i) deny an application solely on the basis that the applicant proposes to use the LNG terminal exclusively or partially for gas that the applicant or an affiliate of the applicant will supply to the facility; or

[1] So in original. Probably should be ''finds''.

(ii) condition an order on—

(I) a requirement that the LNG terminal offer service to customers other than the applicant, or any affiliate of the applicant, securing the order;

(II) any regulation of the rates, charges, terms, or conditions of service of the LNG terminal; or

(III) a requirement to file with the Commission schedules or contracts related to the rates, charges, terms, or conditions of service of the LNG terminal.

(C) Subparagraph (B) shall cease to have effect on January 1, 2030.

(4) An order issued for an LNG terminal that also offers service to customers on an open access basis shall not result in subsidization of expansion capacity by existing customers, degradation of service to existing customers, or undue discrimination against existing customers as to their terms or conditions of service at the facility, as all of those terms are defined by the Commission.

(f) Military installations

(1) In this subsection, the term ''military installation''—

(A) means a base, camp, post, range, station, yard, center, or homeport facility for any ship or other activity under the jurisdiction of the Department of Defense, including any leased facility, that is located within a State, the District of Columbia, or any territory of the United States; and

(B) does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects, as determined by the Secretary of Defense.

(2) The Commission shall enter into a memorandum of understanding with the Secretary of Defense for the purpose of ensuring that the Commission coordinate and consult[2] with the Secretary of Defense on the siting, construction, expansion, or operation of liquefied natural gas facilities that may affect an active military installation.

(3) The Commission shall obtain the concurrence of the Secretary of Defense before authorizing the siting, construction, expansion, or operation of liquefied natural gas facilities affecting the training or activities of an active military installation.

(June 21, 1938, ch. 556, § 3, 52 Stat. 822; Pub. L. 102–486, title II, § 201, Oct. 24, 1992, 106 Stat. 2866; Pub. L. 109–58, title III, § 311(c), Aug. 8, 2005, 119 Stat. 685.)

REFERENCES IN TEXT

The Coastal Zone Management Act of 1972, referred to in subsec. (d)(1), is title III of Pub. L. 89–454 as added by Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1280, as amended, which is classified generally to chapter 33 (§ 1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

The Clean Air Act, referred to in subsec. (d)(2), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (§ 7401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (d)(3), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

AMENDMENTS

2005—Pub. L. 109–58, § 311(c)(1), inserted ''; LNG terminals'' after ''natural gas'' in section catchline.

Subsecs. (d) to (f). Pub. L. 109–58, § 311(c)(2), added subsecs. (d) to (f).

1992—Pub. L. 102–486 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Energy and Commission, Commissioners, or other official in Federal Energy Regulatory Commission related to compliance with authorizations for importation of natural gas from Alberta as pre-deliveries of Alaskan gas issued under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to the Federal Inspector, Office of Federal Inspector for Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(d), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out under section 719e of this title. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of this title. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of this title.

DELEGATION OF FUNCTIONS

Functions of President respecting certain facilities constructed and maintained on United States borders delegated to Secretary of State, see Ex. Ord. No. 11423, Aug. 16, 1968, 33 F.R. 11741, set out as a note under section 301 of Title 3, The President.

EX. ORD. NO. 10485. PERFORMANCE OF FUNCTIONS RESPECTING ELECTRIC POWER AND NATURAL GAS FACILITIES LOCATED ON UNITED STATES BORDERS

Ex. Ord. No. 10485. Sept. 3, 1953, 18 F.R. 5397, as amended by Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, provided:

SECTION 1. (a) The Secretary of Energy is hereby designated and empowered to perform the following-described functions:

(1) To receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the transmission of electric energy between the United States and a foreign country.

(2) To receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the exportation or importation of natural gas to or from a foreign country.

(3) Upon finding the issuance of the permit to be consistent with the public interest, and, after obtaining the favorable recommendations of the Secretary of State and the Secretary of Defense thereon, to issue to the applicant, as appropriate, a permit for such construction, operation, maintenance, or connection. The Secretary of Energy shall have the power to attach to

[2] So in original. Probably should be ''coordinates and consults''.

the issuance of the permit and to the exercise of the rights granted thereunder such conditions as the public interest may in its judgment require.

(b) In any case wherein the Secretary of Energy, the Secretary of State, and the Secretary of Defense cannot agree as to whether or not a permit should be issued, the Secretary of Energy shall submit to the President for approval or disapproval the application for a permit with the respective views of the Secretary of Energy, the Secretary of State and the Secretary of Defense.

SEC. 2. [Deleted.]

SEC. 3. The Secretary of Energy is authorized to issue such rules and regulations, and to prescribe such procedures, as it may from time to time deem necessary or desirable for the exercise of the authority delegated to it by this order.

SEC. 4. All Presidential Permits heretofore issued pursuant to Executive Order No. 8202 of July 13, 1939, and in force at the time of the issuance of this order, and all permits issued hereunder, shall remain in full force and effect until modified or revoked by the President or by the Secretary of Energy.

SEC. 5. Executive Order No. 8202 of July 13, 1939, is hereby revoked.

§ 717b–1. State and local safety considerations

(a) Promulgation of regulations

The Commission shall promulgate regulations on the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) pre-filing process within 60 days after August 8, 2005. An applicant shall comply with pre-filing process required under the National Environmental Policy Act of 1969 prior to filing an application with the Commission. The regulations shall require that the pre-filing process commence at least 6 months prior to the filing of an application for authorization to construct an LNG terminal and encourage applicants to cooperate with State and local officials.

(b) State consultation

The Governor of a State in which an LNG terminal is proposed to be located shall designate the appropriate State agency for the purposes of consulting with the Commission regarding an application under section 717b of this title. The Commission shall consult with such State agency regarding State and local safety considerations prior to issuing an order pursuant to section 717b of this title. For the purposes of this section, State and local safety considerations include—

(1) the kind and use of the facility;

(2) the existing and projected population and demographic characteristics of the location;

(3) the existing and proposed land use near the location;

(4) the natural and physical aspects of the location;

(5) the emergency response capabilities near the facility location; and

(6) the need to encourage remote siting.

(c) Advisory report

The State agency may furnish an advisory report on State and local safety considerations to the Commission with respect to an application no later than 30 days after the application was filed with the Commission. Before issuing an order authorizing an applicant to site, construct, expand, or operate an LNG terminal, the Commission shall review and respond specifically to the issues raised by the State agency described in subsection (b) of this section in the advisory report. This subsection shall apply to any application filed after August 8, 2005. A State agency has 30 days after August 8, 2005 to file an advisory report related to any applications pending at the Commission as of August 8, 2005.

(d) Inspections

The State commission of the State in which an LNG terminal is located may, after the terminal is operational, conduct safety inspections in conformance with Federal regulations and guidelines with respect to the LNG terminal upon written notice to the Commission. The State commission may notify the Commission of any alleged safety violations. The Commission shall transmit information regarding such allegations to the appropriate Federal agency, which shall take appropriate action and notify the State commission.

(e) Emergency Response Plan

(1) In any order authorizing an LNG terminal the Commission shall require the LNG terminal operator to develop an Emergency Response Plan. The Emergency Response Plan shall be prepared in consultation with the United States Coast Guard and State and local agencies and be approved by the Commission prior to any final approval to begin construction. The Plan shall include a cost-sharing plan.

(2) A cost-sharing plan developed under paragraph (1) shall include a description of any direct cost reimbursements that the applicant agrees to provide to any State and local agencies with responsibility for security and safety—

(A) at the LNG terminal; and

(B) in proximity to vessels that serve the facility.

(June 21, 1938, ch. 556, § 3A, as added Pub. L. 109–58, title III, § 311(d), Aug. 8, 2005, 119 Stat. 687.)

REFERENCES IN TEXT

The National Environmental Policy Act of 1969, referred to in subsec. (a), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

§ 717c. Rates and charges

(a) Just and reasonable rates and charges

All rates and charges made, demanded, or received by any natural-gas company for or in connection with the transportation or sale of natural gas subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is declared to be unlawful.

(b) Undue preferences and unreasonable rates and charges prohibited

No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to

neys, examiners, and experts as may be necessary for carrying out its functions under this chapter ''without regard to the provisions of other laws applicable to the employment and compensation of officers and employees of the United States'' are omitted as obsolete and superseded.

As to the compensation of such personnel, sections 1202 and 1204 of the Classification Act of 1949, 63 Stat. 972, 973, repealed the Classification Act of 1923 and all other laws or parts of laws inconsistent with the 1949 Act. The Classification Act of 1949 was repealed by Pub. L. 89–554, Sept. 6, 1966, §8(a), 80 Stat. 632, and reenacted as chapter 51 and subchapter III of chapter 53 of Title 5, Government Organization and Employees. Section 5102 of Title 5 contains the applicability provisions of the 1949 Act, and section 5103 of Title 5 authorizes the Office of Personnel Management to determine the applicability to specific positions and employees.

Such appointments are now subject to the civil service laws unless specifically excepted by those laws or by laws enacted subsequent to Executive Order 8743, Apr. 23, 1941, issued by the President pursuant to the Act of Nov. 26, 1940, ch. 919, title I, §1, 54 Stat. 1211, which covered most excepted positions into the classified (competitive) civil service. The Order is set out as a note under section 3301 of Title 5.

''Chapter 51 and subchapter III of chapter 53 of title 5'' substituted in text for ''the Classification Act of 1949, as amended'' on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5.

AMENDMENTS

1949—Act Oct. 28, 1949, substituted ''Classification Act of 1949'' for ''Classification Act of 1923''.

REPEALS

Act Oct. 28, 1949, ch. 782, cited as a credit to this section, was repealed (subject to a savings clause) by Pub. L. 89–554, Sept. 6, 1966, §8, 80 Stat. 632, 655.

§ 717r. Rehearing and review

(a) Application for rehearing; time

Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b) of this section, the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.

(b) Review of Commission order

Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which is supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(c) Stay of Commission order

The filing of an application for rehearing under subsection (a) of this section shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(d) Judicial review

(1) In general

The United States Court of Appeals for the circuit in which a facility subject to section 717b of this title or section 717f of this title is proposed to be constructed, expanded, or operated shall have original and exclusive jurisdiction over any civil action for the review of an order or action of a Federal agency (other than the Commission) or State administrative agency acting pursuant to Federal law to

issue, condition, or deny any permit, license, concurrence, or approval (hereinafter collectively referred to as ''permit'') required under Federal law, other than the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

(2) Agency delay

The United States Court of Appeals for the District of Columbia shall have original and exclusive jurisdiction over any civil action for the review of an alleged failure to act by a Federal agency (other than the Commission) or State administrative agency acting pursuant to Federal law to issue, condition, or deny any permit required under Federal law, other than the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.), for a facility subject to section 717b of this title or section 717f of this title. The failure of an agency to take action on a permit required under Federal law, other than the Coastal Zone Management Act of 1972, in accordance with the Commission schedule established pursuant to section 717n(c) of this title shall be considered inconsistent with Federal law for the purposes of paragraph (3).

(3) Court action

If the Court finds that such order or action is inconsistent with the Federal law governing such permit and would prevent the construction, expansion, or operation of the facility subject to section 717b of this title or section 717f of this title, the Court shall remand the proceeding to the agency to take appropriate action consistent with the order of the Court. If the Court remands the order or action to the Federal or State agency, the Court shall set a reasonable schedule and deadline for the agency to act on remand.

(4) Commission action

For any action described in this subsection, the Commission shall file with the Court the consolidated record of such order or action to which the appeal hereunder relates.

(5) Expedited review

The Court shall set any action brought under this subsection for expedited consideration.

(June 21, 1938, ch. 556, §19, 52 Stat. 831; June 25, 1948, ch. 646, §32(a), 62 Stat. 991; May 24, 1949, ch. 139, §127, 63 Stat. 107; Pub. L. 85–791, §19, Aug. 28, 1958, 72 Stat. 947; Pub. L. 109–58, title III, §313(b), Aug. 8, 2005, 119 Stat. 689.)

REFERENCES IN TEXT

The Coastal Zone Management Act of 1972, referred to in subsec. (d)(1), (2), is title III of Pub. L. 89–454, as added by Pub. L. 92–583, Oct. 27, 1972, 86 Stat. 1280, as amended, which is classified generally to chapter 33 (§1451 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1451 of Title 16 and Tables.

CODIFICATION

In subsec. (b), ''section 1254 of title 28'' substituted for ''sections 239 and 240 of the Judicial Code, as amended [28 U.S.C. 346, 347]'' on authority of act June 25, 1948, ch. 646, 62 Stat. 869, the first section of which enacted Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

2005—Subsec. (d). Pub. L. 109–58 added subsec. (d).

1958—Subsec. (a). Pub. L. 85–791, §19(a), inserted sentence providing that until record in a proceeding has been filed in a court of appeals, Commission may modify or set aside any finding or order issued by it.

Subsec. (b). Pub. L. 85–791, §19(b), in second sentence, substituted ''transmitted by the clerk of the court to'' for ''served upon'', substituted ''file with the court'' for ''certify and file with the court a transcript of'', and inserted ''as provided in section 2112 of title 28'', and, in third sentence, substituted ''petition'' for ''transcript'', and ''jurisdiction, which upon the filing of the record with it shall be exclusive'' for ''exclusive jurisdiction''.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted ''court of appeals'' for ''circuit court of appeals'' wherever appearing.

§ 717s. Enforcement of chapter

(a) Action in district court for injunction

Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this chapter, or of any rule, regulation, or order thereunder, it may in its discretion bring an action in the proper district court of the United States, or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this chapter or any rule, regulation, or order thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices or concerning apparent violations of the Federal antitrust laws to the Attorney General, who, in his discretion, may institute the necessary criminal proceedings.

(b) Mandamus

Upon application of the Commission the district courts of the United States and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have jurisdiction to issue writs of mandamus commanding any person to comply with the provisions of this chapter or any rule, regulation, or order of the Commission thereunder.

(c) Employment of attorneys by Commission

The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the Commission or its members in the conduct of their work, or for proper representation of the public interest in investigations made by it, or cases or proceedings pending before it, whether at the Commission's own instance or upon complaint, or to appear for or represent the Commission in any case in court; and the expenses of such employment shall be paid out of the appropriation for the Commission.

(d) Violation of market manipulation provisions

In any proceedings under subsection (a) of this section, the court may prohibit, conditionally or unconditionally, and permanently or for such period of time as the court determines, any individual who is engaged or has engaged in practices constituting a violation of section 717c–1 of

discussions of the need for the proposal, of alternatives as required by section 102(2)(E) of NEPA, of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

(e) *Environmental impact statement* (EIS) means a detailed written statement as required by section 102(2)(C) of NEPA. DEIS means a draft EIS and FEIS means a final EIS.

(f) *Environmental report* or ER means that part of an application submitted to the Commission by an applicant for authorization of a proposed action which includes information concerning the environment, the applicant's analysis of the environmental impact of the action, or alternatives to the action required by this or other applicable statutes or regulations.

(g) *Finding of no significant impact* (FONSI) means a document by the Commission briefly presenting the reason why an action, not otherwise excluded by §380.4, will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It must include the environmental assessment or a summary of it and must note other environmental documents related to it. If the assessment is included, the FONSI need not repeat any of the discussion in the assessment but may incorporate it by reference.

§380.3 Environmental information to be supplied by an applicant.

(a) An applicant must submit information as follows:

(1) For any proposed action identified in §§380.5 and 380.6, an environmental report with the proposal as prescribed in paragraph (c) of this section.

(2) For any proposal not identified in paragraph (a)(1) of this section, any environmental information that the Commission may determine is necessary for compliance with these regulations, the regulations of the Council, NEPA and other Federal laws such as the Endangered Species Act, the National Historic Preservation Act or the Coastal Zone Management Act.

(b) An applicant must also:

(1) Provide all necessary or relevant information to the Commission;

(2) Conduct any studies that the Commission staff considers necessary or relevant to determine the impact of the proposal on the human environment and natural resources;

(3) Consult with appropriate Federal, regional, State, and local agencies during the planning stages of the proposed action to ensure that all potential environmental impacts are identified. (The specific requirements for consultation on hydropower projects are contained in §4.38 and §16.8 of this chapter and in section 4(a) of the Electric Consumers Protection Act, Pub. L. No. 99–495, 100 Stat. 1243, 1246 (1986));

(4) Submit applications for all Federal and State approvals as early as possible in the planning process; and

(5) Notify the Commission staff of all other Federal actions required for completion of the proposed action so that the staff may coordinate with other interested Federal agencies.

(c) *Content of an applicant's environmental report for specific proposals*—1) *Hydropower projects.* The information required for specific project applications under part 4 or 16 of this chapter.

(2) *Natural gas projects.* (i) For any application filed under the Natural Gas Act for any proposed action identified in §§380.5 or 380.6, except for prior notice filings under §157.208, as described in §380.5(b), the information identified in §380.12 and Appendix A of this part.

(ii) For prior notice filings under §157.208, the report described by §157.208(c)(11) of this chapter.

(3) *Electric transmission project.* For pre-filing requests and applications filed under section 216 of the Federal Power Act identified in §§380.5(b)(14) and 380.6(a)(5).

[Order 486, 52 FR 47910, Dec. 17, 1987, as amended by Order 533, 56 FR 23155, May 20, 1991; Order 603, 64 FR 26611, May 14, 1999; Order 689, 71 FR 69470, Dec. 1, 2006; Order 756, 77 FR 4895, Feb. 1, 2012]

§380.4 Projects or actions categorically excluded.

(a) *General rule.* Except as stated in paragraph (b) of this section, neither an environmental assessment nor an environmental impact statement will be prepared for the following projects or actions:

(1) Procedural, ministerial, or internal administrative and management actions, programs, or decisions, including procurement, contracting, personnel actions, correction or clarification of filings or orders, and acceptance, rejection and dismissal of filings;

(2)(i) Reports or recommendations on legislation not initiated by the Commission, and

(ii) Proposals for legislation and promulgation of rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of legislation or regulations being amended;

(3) Compliance and review actions, including investigations (jurisdictional or otherwise), conferences, hearings, notices of probable violation, show cause orders, and adjustments under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA);

(4) Review of grants or denials by the Department of Energy (DOE) of any adjustment request, and review of contested remedial orders issued by DOE;

(5) Information gathering, analysis, and dissemination;

(6) Conceptual or feasibility studies;

(7) Actions concerning the reservation and classification of United States lands as water power sites and other actions under section 24 of the Federal Power Act;

(8) Transfers of water power project licenses and transfers of exemptions under Part I of the Federal Power Act and Part 9 of this chapter;

(9) Issuance of preliminary permits for water power projects under Part I of the Federal Power Act and Part 4 of this chapter;

(10) Withdrawals of applications for certificates under the Natural Gas Act, or for water power project preliminary permits, exemptions, or licenses under Part I of the Federal Power Act and Part 4 of this chapter;

(11) Actions concerning annual charges or headwater benefits, charges for water power projects under Parts 11 and 13 of this chapter and establishment of fees to be paid by an applicant for a license or exemption required to meet the terms and conditions of section 30(c) of the Federal Power Act;

(12) Approval for water power projects under Part I of the Federal Power Act, of ''as built'' or revised drawings or exhibits that propose no changes to project works or operations or that reflect changes that have previously been approved or required by the Commission;

(13) Surrender and amendment of preliminary permits, and surrender of water power licenses and exemptions where no project works exist or ground disturbing activity has occurred and amendments to water power licenses and exemptions that do not require ground disturbing activity or changes to project works or operation;

(14) Exemptions for small conduit hydroelectric facilities as defined in § 4.30(b)(26) of this chapter under Part I of the Federal Power Act and Part 4 of this chapter;

(15) Electric rate filings submitted by public utilities under sections 205 and 206 of the Federal Power Act, the establishment of just and reasonable rates, and confirmation, approval, and disapproval of rate filings submitted by Federal power marketing agencies under the Pacific Northwest Electric Power Planning and Conservation Act, the Department of Energy Organization Act, and DOE Delegation Order No. 0204–108.

(16) Approval of actions under sections 4(b), 203, 204, 301, 304, and 305 of the Federal Power Act relating to issuance and purchase of securities, acquisition or disposition of property, merger, interlocking directorates, jurisdictional determinations and accounting orders;

(17) Approval of electrical interconnections and wheeling under sections 202(b), 210, 211, and 212 of the Federal Power Act, that would not entail:

(i) Construction of a new substation or expansion of the boundaries of an existing substation;

(ii) Construction of any transmission line that operates at more than 115 kilovolts (KV) and occupies more than ten miles of an existing right-of-way; or

(iii) Construction of any transmission line more than one mile long if located on a new right-of-way;

(18) Approval of changes in land rights for water power projects under Part I of the Federal Power Act and

Part 4 of this chapter, if no construction or change in land use is either proposed or known by the Commission to be contemplated for the land affected;

(19) Approval of proposals under Part I of the Federal Power Act and Part 4 of this chapter to authorize use of water power project lands or waters for gas or electric utility distribution lines, radial (sub-transmission) lines, communications lines and cables, storm drains, sewer lines not discharging into project waters, water mains, piers, landings, boat docks, or similar structures and facilities, landscaping or embankments, bulkheads, retaining walls, or similar shoreline erosion control structures;

(20) Action on applications for exemption under section 1(c) of the Natural Gas Act;

(21) Approvals of blanket certificate applications and prior notice filings under §157.204 and §§157.209 through 157.218 of this chapter;

(22) Approvals of blanket certificate applications under §§284.221 through 284.224 of this chapter;

(23) Producers' applications for the sale of gas filed under §§157.23 through 157.29 of this chapter;

(24) Approval under section 7 of the Natural Gas Act of taps, meters, and regulating facilities located completely within an existing natural gas pipeline right-of-way or compressor station if company records show the land use of the vicinity has not changed since the original facilities were installed, and no significant nonjurisdictional facilities would be constructed in association with construction of the interconnection facilities;

(25) Review of natural gas rate filings, including any curtailment plans other than those specified in §380.5(b)(5), and establishment of rates for transportation and sale of natural gas under sections 4 and 5 of the Natural Gas Act and sections 311 and 401 through 404 of the Natural Gas Policy Act of 1978;

(26) Review of approval of oil pipeline rate filings under Parts 340 and 341 of this chapter;

(27) Sale, exchange, and transportation of natural gas under sections 4, 5 and 7 of the Natural Gas Act that require no construction of facilities;

(28) Abandonment in place of a minor natural gas pipeline (short segments of buried pipe of 6-inch inside diameter or less), or abandonment by removal of minor surface facilities such as metering stations, valves, and taps under section 7 of the Natural Gas Act so long as appropriate erosion control and site restoration takes place;

(29) Abandonment of service under any gas supply contract pursuant to section 7 of the Natural Gas Act;

(30) Approval of filing made in compliance with the requirements of a certificate for a natural gas project under section 7 of the Natural Gas Act or a preliminary permit, exemption, license, or license amendment order for a water power project under Part I of the Federal Power Act;

(31) Abandonment of facilities by sale that involves only minor or no ground disturbance to disconnect the facilities from the system;

(32) Conversion of facilities from use under the NGPA to use under the NGA;

(33) Construction or abandonment of facilities constructed entirely in Federal offshore waters that has been approved by the Minerals Management Service and the Corps of Engineers, as necessary;

(34) Abandonment or construction of facilities on an existing offshore platform;

(35) Abandonment, construction or replacement of a facility (other than compression) solely within an existing building within a natural gas facility (other than LNG facilities), if it does not increase the noise or air emissions from the facility, as a whole; and

(36) Conversion of compression to standby use if the compressor is not moved, or abandonment of compression if the compressor station remains in operation.

(b) *Exceptions to categorical exclusions.* (1) In accordance with 40 CFR 1508.4, the Commission and its staff will independently evaluate environmental information supplied in an application and in comments by the public. Where circumstances indicate that an action may be a major Federal action significantly affecting the quality of the human environment, the Commission:

(i) May require an environmental report or other additional environmental information, and

(ii) Will prepare an environmental assessment or an environmental impact statement.

(2) Such circumstances may exist when the action may have an effect on one of the following:

(i) Indian lands;

(ii) Wilderness areas;

(iii) Wild and scenic rivers;

(iv) Wetlands;

(v) Units of the National Park System, National Refuges, or National Fish Hatcheries;

(vi) Anadromous fish or endangered species; or

(vii) Where the environmental effects are uncertain.

However, the existence of one or more of the above will not automatically require the submission of an environmental report or the preparation of an environmental assessment or an environmental impact statement.

[Order 486, 52 FR 47910, Dec. 17, 1987, as amended at 53 FR 8177, Mar. 14, 1988; Order 486-B, 53 FR 26437, July 13, 1988; 54 FR 48740, Nov. 27, 1989; Order 603, 64 FR 26611, May 14, 1999; Order 609, 64 FR 57392, Oct. 25, 1999; Order 756, 77 FR 4895, Feb. 1, 2012]

§ 380.5 Actions that require an environmental assessment.

(a) An environmental assessment will normally be prepared first for the actions identified in this section. Depending on the outcome of the environmental assessment, the Commission may or may not prepare an environmental impact statement. However, depending on the location or scope of the proposed action, or the resources affected, the Commission may in specific circumstances proceed directly to prepare an environmental impact statement.

(b) The projects subject to an environmental assessment are as follows:

(1) Except as identified in §§ 380.4, 380.6 and 2.55 of this chapter, authorization for the site of new gas import/export facilities under DOE Delegation No. 0204–112 and authorization under section 7 of the Natural Gas Act for the construction, replacement, or abandonment of compression, processing, or interconnecting facilities, onshore and offshore pipelines, metering facilities, LNG peak-shaving facilities, or other facilities necessary for the sale, exchange, storage, or transportation of natural gas;

(2) Prior notice filings under § 157.208 of this chapter for the rearrangement of any facility specified in §§ 157.202 (b)(3) and (6) of this chapter or the acquisition, construction, or operation of any eligible facility as specified in §§ 157.202 (b)(2) and (3) of this chapter;

(3) Abandonment or reduction of natural gas service under section 7 of the Natural Gas Act unless excluded under § 380.4 (a)(21), (28) or (29);

(4) Except as identified in § 380.6, conversion of existing depleted oil or natural gas fields to underground storage fields under section 7 of the Natural Gas Act.

(5) New natural gas curtailment plans, or any amendment to an existing curtailment plan under section 4 of the Natural Gas Act and sections 401 through 404 of the Natural Gas Policy Act of 1978 that has a major effect on an entire pipeline system;

(6) Licenses under Part I of the Federal Power Act and part 4 of this chapter for construction of any water power project—existing dam;

(7) Exemptions under section 405 of the Public Utility Regulatory Policies Act of 1978, as amended, and §§ 4.30(b)(29) and 4.101–4.108 of this chapter for small hydroelectric power projects of 5 MW or less;

(8) Licenses for additional project works at licensed projects under Part I of the Federal Power Act whether or not these are styled license amendments or original licenses;

(9) Licenses under Part I of the Federal Power Act and part 4 of this chapter for transmission lines only;

(10) Applications for new licenses under section 15 of the Federal Power Act;

(11) Approval of electric interconnections and wheeling under section 202(b), 210, 211, and 212 of the Federal Power Act, unless excluded under § 380.4(a)(17);

(12) Regulations or proposals for legislation not included under § 380.4(a)(2);

(13) Surrender of water power licenses and exemptions where project works exist or ground disturbing activity has occurred and amendments to

§ 1501.2 Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(a) Comply with the mandate of section 102(2)(A) to ''utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment,'' as specified by § 1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The Federal agency commences its NEPA process at the earliest possible time.

§ 1501.3 When to prepare an environmental assessment.

(a) Agencies shall prepare an environmental assessment (§ 1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in § 1507.3. An assessment is not necessary if the agency has decided to prepare an environmental impact statement.

(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.

§ 1501.4 Whether to prepare an environmental impact statement.

In determining whether to prepare an environmental impact statement the Federal agency shall:

(a) Determine under its procedures supplementing these regulations (described in § 1507.3) whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (§ 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by § 1508.9(a)(1).

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) Commence the scoping process (§ 1501.7), if the agency will prepare an environmental impact statement.

(e) Prepare a finding of no significant impact (§ 1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

(1) The agency shall make the finding of no significant impact available to the affected public as specified in § 1506.6.

(2) In certain limited circumstances, which the agency may cover in its procedures under § 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to § 1507.3, or

(ii) The nature of the proposed action is one without precedent.

§ 1501.5 Lead agencies.

(a) A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (§ 1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency.

A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action.

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

[43 FR 55992, Nov. 29, 1978; 44 FR 873, Jan. 3, 1979]

§ 1501.6 Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order that the unclassified portions can be made available to the public.

(d) Agency procedures may provide for periods of time other than those presented in §1506.10 when necessary to comply with other specific statutory requirements.

(e) Agency procedures may provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by §1501.7 may be published at a reasonable time in advance of preparation of the draft statement.

PART 1508—TERMINOLOGY AND INDEX

Sec.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

SOURCE: 43 FR 56003, Nov. 29, 1978, unless otherwise noted.

§ 1508.1 Terminology.

The terminology of this part shall be uniform throughout the Federal Government.

§ 1508.2 Act.

Act means the National Environmental Policy Act, as amended (42 U.S.C. 4321, *et seq.*) which is also referred to as ''NEPA.''

§ 1508.3 Affecting.

Affecting means will or may have an effect on.

§ 1508.4 Categorical exclusion.

Categorical exclusion means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in §1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

§ 1508.5 Cooperating agency.

Cooperating agency means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in §1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

§ 1508.6 Council.

Council means the Council on Environmental Quality established by title II of the Act.

§ 1508.7 Cumulative impact.

Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

§ 1508.8 Effects.

Effects include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

§ 1508.9 Environmental assessment.

Environmental assessment:

(a) Means a concise public document for which a Federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

§ 1508.10 Environmental document.

Environmental document includes the documents specified in § 1508.9 (environmental assessment), § 1508.11 (environmental impact statement), § 1508.13 (finding of no significant impact), and § 1508.22 (notice of intent).

§ 1508.11 Environmental impact statement.

Environmental impact statement means a detailed written statement as required by section 102(2)(C) of the Act.

§ 1508.12 Federal agency.

Federal agency means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

§ 1508.13 Finding of no significant impact.

Finding of no significant impact means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§ 1501.7(a)(5)). If the assessment is included, the finding need not

repeat any of the discussion in the assessment but may incorporate it by reference.

§ 1508.14 Human environment.

Human environment shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of ''effects'' (§ 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

§ 1508.15 Jurisdiction by law.

Jurisdiction by law means agency authority to approve, veto, or finance all or part of the proposal.

§ 1508.16 Lead agency.

Lead agency means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

§ 1508.17 Legislation.

Legislation includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

§ 1508.18 Major Federal action.

Major Federal action includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (§ 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§§ 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 *et seq.*, with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 *et seq.;* treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of Federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

§ 1508.19 Matter.

Matter includes for purposes of part 1504:

Type of Review: Extension of an existing information collection.

Respondents/Affected Public: Private Sector (Business or for-profit institutions).

Total Estimated Number of Annual Responses: 2,201.

Total Estimated Number of Annual Burden Hours: 3,302 .

Abstract: As provided by the Higher Education Opportunity Act (Pub. L. 110–315), the regulations provide that a proprietary institution must derive at least 10% of its annual revenue from sources other than Title IV, Higher Education Act (HEA) funds, sanctions for failing to meet this requirement, and otherwise implement the statute by (1) Specifying a Net Present Value (NPV) formula used to establish the revenue for institutional loans, (2) providing an administratively easier alternative to the NPV calculation, and (3) describing more fully the non-Title IV eligible programs from which revenue may be counted for 90/10 purposes. The regulations require an institution to disclose in a footnote to its audited financial statements the amounts of Federal and non-Federal revenues, by category, that it used in calculating its 90/10 ratio (see section 487(d) of the HEA). This request is for extending approval of reporting requirements contained in the regulations related to the administrative requirements of the non-Title IV revenue requirement (90/10) program. The information collection requirements in the regulations are necessary to determine eligibility to receive program benefits and to prevent fraud and abuse of program funds.

Dated: December 5, 2012.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–29817 Filed 12–10–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

2012 LNG Export Study

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of availability of 2012 LNG Export Study and request for comments.

Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC	[FE Docket No. 10–161–LNG]
Lake Charles Exports, LLC	[FE Docket No. 11–59–LNG]
Dominion Cove Point LNG, LP	[FE Docket No. 11–128–LNG]
Carib Energy (USA) LLC	[FE Docket No. 11–141–LNG]
Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC	[FE Docket No. 11–161–LNG]
Cameron LNG, LLC Gulf	[FE Docket No. 11–162–LNG]
Gulf Coast LNG Export, LLC	[FE Docket No. 12–05–LNG]
Jordan Cove Energy Project, L.P	[FE Docket No. 12–32–LNG]
LNG Development Company, LLC (d/b/a Oregon LNG)	[FE Docket No. 12–77–LNG]
Cheniere Marketing, LLC	[FE Docket No. 12–97–LNG]
Southern LNG Company, L.L.C	[FE Docket No. 12–100–LNG]
Gulf LNG Liquefaction Company, LLC	[FE Docket No. 12–101–LNG]
CE FLNG, LLC	[FE Docket No. 12–123–LNG]
Excelerate Liquefaction Solutions I, LLC	[FE Docket No. 12–146–LNG]
Golden Pass Products LLC	[FE Docket No. 12–156–LNG]

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of the availability of a liquefied natural gas (LNG) export cumulative impact study (LNG Export Study) in the above-referenced proceedings and invites the submission of initial and reply comments regarding the LNG Export Study. DOE commissioned the LNG Export Study to inform DOE's decisions on applications seeking authorization to export LNG from the lower-48 states to non-free trade agreement (FTA) countries.[1] The LNG Export Study consisted of two parts. The first part, performed by the Energy Information Administration (EIA) and originally published in January 2012, assessed how specified scenarios of increased natural gas exports could affect domestic energy markets. The second part, performed by NERA Economic Consulting (NERA) under contract to DOE, evaluated the macro-economic impact of LNG exports on the U.S. economy using a general equilibrium macroeconomic model of the U.S. economy with an emphasis on the energy sector and natural gas in particular. DOE may use the LNG Export Study to inform its decision in the listed proceedings and for other purposes. Comments submitted in compliance with the instructions in this notice will be placed in the administrative record for all of the above-listed proceedings and need only be submitted once.

DATES: Initial comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., eastern time, January 24, 2013. Reply comments are to be filed using the same procedures and will be accepted for filing from January 25, 2013, until 4:30 p.m., eastern time, February 25, 2013.

ADDRESSES:

Electronic Filing by email: LNGStudy@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

John Anderson, U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–0521.

Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6B–256, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 3 of the Natural Gas Act, 15 U.S.C. 717b, exports of natural gas, including LNG, must be

[1] The LNG Export Study did not consider the impact of exports of Alaska natural gas production. Because there is no natural gas pipeline interconnection between Alaska and the lower-48 states, the macroeconomic consequences of exporting LNG from Alaska are likely to be discrete and separate from those of exporting from the lower-48 states.

authorized by DOE/FE.[2] Applications that seek authority to export natural gas to countries with which the United States has not entered into a free trade agreement providing for national treatment for trade in natural gas (non-FTA nations) are presumed to be in the public interest unless, after opportunity for a hearing, DOE finds that the authorizations would not be consistent with the public interest.

On May 20, 2011, in *Sabine Pass Liquefaction, LLC,* Opinion and Order No. 2961 (*Sabine Pass*), DOE issued a conditional authorization to Sabine Pass Liquefaction, LLC for exports to non-FTA nations.[3] Due to its receipt of other applications to export LNG to non-FTA nations, and in anticipation of additional applications, DOE cautioned in Order No. 2961 that it has a continuing duty to monitor supply and demand conditions in the United States in order to ensure that authorizations to export LNG do not subsequently lead to a reduction in the supply of natural gas needed to meet essential domestic needs. Order No. 2961 at 32. DOE further stated that it would evaluate the cumulative impact of the *Sabine Pass* authorization and any future export authorizations when considering subsequent applications for such authority. *Id.*

Like *Sabine Pass,* the 15 proceedings identified above involve applications submitted by the named parties seeking authorization to export LNG from the lower-48 states to non-FTA nations. In response, DOE commissioned a study, consisting of two separate parts, of the economic impacts of granting these types of applications. The purpose of this Notice is to post the LNG Export Study in the 15 proceedings, and to invite initial and reply comments on the LNG Export Study, as applied to the pending matters. The LNG Export Study and the comments that DOE/FE receives in response to this Notice will help to inform our determination of the public interest in each case.

The LNG Export Study

In summary, the LNG Export Study includes:

- An analysis performed by the Energy Information Administration (EIA) and originally published in January 2012, entitled *Effect of Increased Natural Gas Exports on Domestic Energy Markets* (EIA Study), examining how specified scenarios of increased natural gas exports could affect domestic energy markets.
- An evaluation performed by NERA Economic Consulting (NERA), a private contractor retained by DOE, entitled *Macroeconomic Impacts of Increased LNG Exports From the United States* (NERA Study). The NERA analysis assessed the macroeconomic impact of LNG exports on the U.S. economy using a general equilibrium macroeconomic model of the U.S. economy with an emphasis on the energy sector and natural gas in particular.

The purpose of the LNG Export Study was to evaluate the cumulative economic impact of the *Sabine Pass* authorization and any future requests for authority to export LNG. At the time DOE commissioned the EIA analysis, it had issued the *Sabine Pass* conditional authorization and had received applications for authority to export LNG by vessel from two additional proposed liquefaction facilities. The combined granted and requested authority to export LNG to non-FTA nations at that time was the equivalent of 5.6 billion cubic feet per day (Bcf/day) of natural gas. Additionally, DOE had been contacted by other companies that were considering filing additional applications to export LNG to non-FTA nations in the Fall of 2011. The approximate volume under consideration for export from these companies was equivalent to approximately another 6 Bcf/day of natural gas.

Given the growing interest in exporting LNG from the lower-48 states, DOE designed the scope of the first part of the LNG Export Study, performed by EIA, to understand the implications of additional natural gas demand (as exports) on domestic energy markets under various scenarios. The scenarios established were not forecasts of either the ultimate level, or rates of increase, of exports; instead, these scenarios were established to set a wide range of potential LNG export scenarios, as assessed by DOE at that time.

However, the EIA analysis did not address the macroeconomic impacts of natural gas exports on the U.S. economy. In particular, given its domestic focus, EIA's National Energy Modeling System does not account for the impact of energy price changes on the global utilization pattern for existing capacity or the siting of new capacity inside or outside of the United States in energy-intensive industries.

Therefore, DOE commissioned NERA to conduct such an analysis. The NERA macroeconomic analysis includes a feasibility analysis of exporting the specified quantities of natural gas used in the EIA analysis, as well as a range of additional global scenarios for natural gas supply and demand, including cases with no export constraints.

The NERA study is available on the DOE/FE Web site (*http://www.fossil.energy.gov/programs/gasregulation/LNGStudy.html*). The EIA study remains available on the EIA Web site (*www.eia.gov/analysis/requests/fe*). Electronic links to both parts have been posted to the 15 listed dockets.

Key Findings of the NERA Study

The Executive Summary of the NERA Study sets forth several key findings regarding the macroeconomic impacts of permitting exports of LNG from the lower-48 states. DOE does not take a position regarding these findings at this time. However, given the complexity of the NERA Study, and in order to help focus the comments being solicited by this Request, it is worthwhile to set out NERA's key findings *verbatim.* In considering NERA's findings, commenters are urged to keep in mind that the NERA Study was performed by an independent non-governmental organization under contract to DOE and that its findings are NERA's own findings, not those of DOE. The NERA Study's key findings, as presented in the NERA Study's Executive Summary are as follows:

> This report contains an analysis of the impact of exports of LNG on the U.S. economy under a wide range of different assumptions about levels of exports, global market conditions, and the cost of producing natural gas in the U.S. These assumptions were combined first into a set of scenarios that explored the range of fundamental factors driving natural gas supply and demand. These market scenarios ranged from relatively normal conditions to stress cases with high costs of producing natural gas in the U.S. and exceptionally large demand for U.S. LNG exports in world markets. The economic impacts of different limits on LNG exports were examined under each of the market scenarios. Export limits were set at levels that ranged from zero to unlimited in each of the scenarios.
>
> Across all these scenarios, the U.S. was projected to gain net economic benefits from allowing LNG exports. Moreover, for every one of the market scenarios examined, net economic benefits increased as the level of LNG exports increased. In particular, scenarios with unlimited exports always had higher net economic benefits than corresponding cases with limited exports.
>
> In all of these cases, benefits that come from export expansion more than outweigh the losses from reduced capital and wage

[2] The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. § 717b) has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00–002.04E (issued April 29, 2011).

[3] On August 7, 2012, DOE/FE issued Order No. 2961–A, A Final Opinion and Order Granting Long-Term Authority To Export LNG From Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations.

income to U.S. consumers, and hence LNG exports have net economic benefits in spite of higher domestic natural gas prices. This is exactly the outcome that economic theory describes when barriers to trade are removed.

Net benefits to the U.S. would be highest if the U.S. becomes able to produce large quantities of gas from shale at low cost, if world demand for natural gas increases rapidly, and if LNG supplies from other regions are limited. If the promise of shale gas is not fulfilled and costs of producing gas in the U.S. rise substantially, or if there are ample supplies of LNG from other regions to satisfy world demand, the U.S. would not export LNG. Under these conditions, allowing exports of LNG would cause no change in natural gas prices and do no harm to the overall economy.

U.S. natural gas prices increase when the U.S. exports LNG. But the global market limits how high U.S. natural gas prices can rise under pressure of LNG exports because importers will not purchase U.S. exports if U.S. wellhead price rises above the cost of competing supplies. In particular, the U.S. natural gas price does not become linked to oil prices in any of the cases examined.

Natural gas price changes attributable to LNG exports remain in a relatively narrow range across the entire range of scenarios. Natural gas price increases at the time LNG exports could begin range from zero to $0.33 (2010 $/Mcf). The largest price increases that would be observed after 5 more years of potentially growing exports could range from $0.22 to $1.11 (2010 $/Mcf). The higher end of the range is reached only under conditions of ample U.S. supplies and low domestic natural gas prices, with smaller price increases when U.S. supplies are more costly and domestic prices higher.

How increased LNG exports will affect different socio-economic groups will depend on their income sources. Like other trade measures, LNG exports will cause shifts in industrial output and employment and in sources of income. Overall, both total labor compensation and income from investment are projected to decline, and income to owners of natural gas resources will increase. Different socio-economic groups depend on different sources of income, though through retirement savings an increasingly large number of workers share in the benefits of higher income to natural resource companies whose shares they own. Nevertheless, impacts will not be positive for all groups in the economy. Households with income solely from wages or government transfers, in particular, might not participate in these benefits.

Serious competitive impacts are likely to be confined to narrow segments of industry. About 10% of U.S. manufacturing, measured by value of shipments, has both energy expenditures greater than 5% of the value of its output and serious exposure to foreign competition. Employment in industries with these characteristics is about one-half of one percent of total U.S. employment.

LNG exports are not likely to affect the overall level of employment in the U.S. There will be some shifts in the number of workers across industries, with those industries associated with natural gas production and exports attracting workers away from other industries. In no scenario is the shift in employment out of any industry projected to be larger than normal rates of turnover of employees in those industries.

NERA Study at 1–2.

Invitation to Comment

DOE invites comments regarding the LNG Export Study that will help to inform DOE in its public interest determinations of the authorizations sought in the 15 pending applications. Comments must be limited to the results and conclusions of these independent analyses on the factors evaluated. These factors include the impact of LNG exports on: domestic energy consumption, production, and prices, and particularly the macroeconomic factors identified in the NERA analysis, including Gross Domestic Product (GDP), welfare analysis, consumption, U.S. economic sector analysis, and U.S. LNG export feasibility analysis, and any other factors included in the analyses. In addition, comments can be directed toward the feasibility of various scenarios used in both analyses. While this invitation to comment covers a broad range of issues, the Department may disregard comments that are not germane to the present inquiry. Moreover, no final decisions will be issued in the 15 pending proceedings until DOE has received and evaluated the comments requested herein.

Public Comment Procedures

DOE is not establishing a new proceeding or docket by today's issuance and the submission of comments in response to this Notice will not make commenters parties to any of the pending 15 cases. Persons with an interest in the outcome of one or more of the 15 pending matters have been given an opportunity to intervene in or protest those pending matters by complying with the procedures established in the respective notices of application issued in the pending 15 matters and published in the **Federal Register**.[4]

The record in the 15 pending proceedings will include all comments received in response to this Notice. Initial and reply comments will be reviewed on a consolidated basis for purposes of hearing, and decisions will be issued on a case-by-case basis. In addition to the procedures established by this Notice, all comments must meet the applicable requirements of DOE's regulations at 10 CFR part 590. The more specific your comments, the more useful they will be.

Reply comments should be directed toward matters specifically addressed in initial comments and should not introduce new issues not previously raised by other commenters. Reply comments will not be accepted until the opportunity for filing initial comments has run.

Comments may be submitted using one of the following methods: (1) Emailing the filing to *LNGStudy@hq.doe.gov*; (2) mailing an original and three paper copies of the filing to the Office of Natural Gas Regulatory Activities at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Natural Gas Regulatory Activities at the address listed in **ADDRESSES**.

All comments and reply comments submitted in response to this Notice should reference the ''2012 LNG Export Study'' in the title line. Any comments greater than 5 pages, double-spaced, in length must be submitted in electronic format.

The 2012 LNG Export Study is available for inspection and copying in the Office of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue, SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. All initial and reply comments filed in response to this Notice will be available electronically by going to the following DOE/FE Web address: *http://*

[4] Notices of application in 12 of the pending cases were published in the **Federal Register** as follows: *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC,* FE Docket No. 10–161–LNG, 76 FR4885 (January 27, 2011); *Lake Charles Exports, LLC,* FE Docket No. 11–59–LNG, 76 FR 34212 (June 13, 2011); *Dominion Cove Point LNG, LP,* FE Docket No. 11–128–LNG, 76 FR 76698 (December 8, 2011); *Carib Energy (USA) LLC,* FE Docket No. 11–141–LNG, 76 FR 80913 (December 12, 2011); *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC,* FE Docket No. 11–161–LNG, 77 FR 7568 (February 13, 2012); *Cameron LNG, LLC,* FE Docket No. 11–162–LNG, 77 FR 10732 (February 23, 2012); *Gulf Coast LNG Export, LLC,* FE Docket No. 12–05–LNG, 77 FR 32962 (June 4, 2012); *Jordan Cove Energy Project, L.P.,*FE Docket No. 12–32–LNG, 77 FR 33446 (June 6, 2012); *LNG Development Company, LLC (d/b/a Oregon LNG),* FE Docket No. 12–77–LNG, 77 FR 55197 (September 7, 2012); Southern LNG Company, L.L.C., FE Docket No. 12–100–LNG, 77 FR 63806 (October 17, 2012); Cheniere Marketing, LLC, FE Docket No. 12–097–LNG, 77 FR 64964 (October 24, 2012); and Gulf LNG Liquefaction Company, LLC FE Docket No. 12–101–LNG, 77 FR 66454, (November 5, 2012). Comments will be received in three other proceedings in which the notices of application were issued by DOE/FE on November 30, 2012, but have not yet posted to the **Federal Register**, including *CE FLNG, LLC,* FE Docket No. 12–123–LNG; *Excelerate Liquefaction Solutions I, LLC,* FE Docket No. 12–146–LNG; and *Golden Pass Products LLC,* FE Docket No. 12–156–LNG..

www.fossil.energy.gov/programs/gasregulation/LNGStudy.html.

Issued in Washington, DC, on December 5, 2012.

John A. Anderson,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

[FR Doc. 2012–29894 Filed 12–10–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC12–19–000]

Commission Information Collection Activities (FERC–732); Comment Request

AGENCY: Federal Energy Regulatory Commission.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collection FERC–732 (Electric Rate Schedules and Tariffs: Long-Term Firm Transmission Rights in Organized Electricity Markets) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (77 FR 58116, 9/19/2012) requesting public comments. FERC received no comments on the FERC–732 and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by January 10, 2013.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0245, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. IC12–19–000, by either of the following methods:

- *eFiling at Commission's Web Site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–732, Electric Rate Schedules and Tariffs: Long-Term Firm Transmission Rights in Organized Electricity Markets.

OMB Control No.: 1902–0245.

Type of Request: Three-year extension of the FERC–732 information collection requirements with no changes to the reporting requirements.

Abstract: 18 CFR Part 42 provides the reporting requirements of FERC–732 as they pertain to long-term transmission rights. To implement section 1233 of the Energy Policy Act of 2005 (EPAct 2005),[1] the Commission requires each transmission organization that is a public utility with one or more organized electricity markets to make available long-term firm transmission rights that satisfy each of the Commission's guidelines.

The FERC–732 regulations require that transmission organizations (that are public utilities with one or more organized electricity markets) choose one of two ways to file:

- File tariff sheets making long-term firm transmission rights available that are consistent with each of the guidelines established by FERC.
- File an explanation describing how their existing tariffs already provide long-term firm transmission rights that are consistent with the guidelines.

Additionally, the Commission requires each transmission organization to make its transmission planning and expansion procedures and plans available to the public.

FERC–732 enables the Commission to exercise its wholesale electric rate and electric power transmission oversight and enforcement responsibilities in accordance with the FPA, the Department of Energy Organization Act (DOE Act), and EPAct 2005.

The Commission intends to include the FERC–732 and all of its applicable requirements within FERC–516 (OMB Control No. 1902–0096). The Commission will ensure complete renewal (to include publishing all public notifications and receiving Office of Management and Budget approval) of FERC–732 information collection. After the collection is renewed, the Commission will seek to incorporate administratively FERC–732 information collection requirements into FERC–516. Finally, the Commission will discontinue the vacant FERC–732 information collection.

Type of Respondents: Public utility with one or more organized electricity markets.

Estimate of Annual Burden:[2] The Commission estimates the total Public Reporting Burden for this information collection as:

[1] Public Law 109–58.

[2] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

Sierra Club v. FERC **Docket No. CP14-12**
D.C. Cir. No. 14-1249

CERTIFICATE OF SERVICE

In accordance with Fed. R. App. P. 24(d), and the Court's Administrative Order Regarding Electronic Case Filing, I hereby certify that I have, this 30th day of September, 2015, served the foregoing upon the counsel listed in the Service Preference Report via email through the Court's CM/ECF system or via U.S. Mail, as indicated below:

Jonathan Saul Franklin — Email
Fulbright & Jaworski LLP
801 Pennsylvania Avenue, NW
Suite 500
Washington, DC 20004-2623

Stacy Renee Linden — Email
American Petroleum Institute
Suite 900
1220 L Street, NW
Suite 900
Washington, DC 20005-4070

Nathan Matthews — Email
Sierra Club
85 Second Street
Second Floor
San Francisco, CA 94105-3441

Sanjay Narayan — Email
Sierra Club
85 Second Street
Second Floor
San Francisco, CA 94105

Benjamin Norris IV — Email
American Petroleum Institute
1220 L Street, NW
Suite 900
Washington, DC 20005-4070

Charles Russell Scott — Email
Norton Rose Fulbright
666 Fifth Avenue
New York, NY 10103-3198

Catherine Emily Stetson — Email
Hogan Lovells US LLP
Columbia Square
555 13th Street, NW
Washington, DC 20004-1109

Lisa M. Tonery — Email
Norton Rose Fulbright
666 Fifth Avenue
New York, NY 10103-3198

/s/ Karin Larson
Karin L. Larson
Attorney

Federal Energy Regulatory Commission
Washington, DC 20426
Tel: (202) 502-8236
Fax: (202) 273-0901