

140 FERC ¶ 61,076  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony T. Clark.

Sabine Pass Liquefaction, LLC  
Sabine Pass LNG, L.P.

Docket No. CP11-72-001

ORDER DENYING REHEARING AND STAY

(Issued July 26, 2012)

1. On April 16, 2012, the Commission issued an order granting Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P. (Sabine Pass), authorization under section 3 of the Natural Gas Act (NGA) and the Commission's regulations<sup>1</sup> to site, construct, and operate facilities for the liquefaction and export of domestically produced natural gas (Liquefaction Project) at the existing Sabine Pass Liquefied Natural Gas (LNG) terminal located in Cameron Parish, Louisiana.<sup>2</sup> On May 10, 2012, the Chief of Gas Branch 2 of the Office of Energy Projects issued a letter order approving the start of initial site preparation. On May 16, 2012, Sierra Club timely filed a request for rehearing and stay of both orders pending a final decision in this proceeding (Rehearing Request). As discussed below, this order denies rehearing and the request for stay.

**I. Background**

2. The April 16 Order approved Sabine Pass's proposal to construct and operate facilities that would enable the companies to liquefy and export up to 2.2 billion cubic feet (Bcf) per day of domestically produced natural gas. These facilities include four LNG process trains, feed gas metering, flares, refrigerant storage, boil-off gas and water handling systems, new buildings, and new utility and power generation facilities. Currently, affiliated Cheniere Creole Trail Pipeline, L.P. and Kinder Morgan Louisiana Pipeline LLC interconnect with the Sabine Pass LNG terminal, and these near-by pipelines would construct any facilities necessary to deliver pipeline quality domestic gas supplies to the Liquefaction Project. Sabine Pass Liquefaction will acquire gas supplies,

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<sup>1</sup> 18 C.F.R. Part 153 (2012).

<sup>2</sup> *Sabine Pass Liquefaction, LLC*, 139 FERC ¶ 61,039 (2012) (April 16 Order).

arrange for transportation to the liquefaction facilities, liquefy the gas feedstock, store the LNG in the terminal's storage facilities, and deliver LNG from the storage tanks into marine vessels for export. Sabine Pass Liquefaction will provide new associated services to third parties pursuant to long-term LNG Processing Service Agreements.

3. The April 16 Order explained that in 1977 the Department of Energy Organization Act transferred the regulatory functions of NGA section 3 to the Secretary of Energy and that, subsequently, with respect to the import or export of natural gas, the Secretary delegated to the Commission the authority to approve or disapprove the construction and operation of facilities, the site at which the facilities would be located, and the place of entry for imports or exit for exports.<sup>3</sup> The April 16 Order added that the Secretary did not delegate to the Commission the authority to approve or disapprove the import or export of the commodity itself, or to consider as part of the Commission's public interest determination the effect of exporting natural gas on domestic gas prices and supplies available for domestic consumers or energy security.<sup>4</sup>

4. On September 7, 2010 and May 20, 2011, pursuant to its NGA section 3 authority, DOE Office of Fossil Energy (DOE/FE) issued to Sabine Pass authorizations to export up to 2.2 Bcf per day of domestically produced natural gas by vessel to all Free Trade Agreement and non-Free Trade Agreement nations, finding the potential export of such volumes was not inconsistent with the public interest.<sup>5</sup>

5. In December 2011, Commission staff issued an environmental assessment (EA) for the proposed Liquefaction Project. DOE acted as a cooperating agency in the EA process.<sup>6</sup> The April 16 Order agreed with the EA's conclusion that, with a number of conditions, the siting, construction, and operation of the Liquefaction Project would result in no significant impacts on the quality of the human environment, and that therefore, no Environmental Impact Statement (EIS) was required.

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<sup>3</sup> Id. P 27.

<sup>4</sup> Id. PP 26, 27.

<sup>5</sup> Id. P 27, *citing* DOE/FE Order Nos. 2833 (2010) and 2961 (2011).

<sup>6</sup> The Council on Environmental Quality regulations implementing NEPA define "cooperating agency" as "any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect" to proposed actions for which a NEPA analysis is prepared. *See* 40 C.F.R. § 1508.5 (2011).

6. As is relevant here, the April 16 Order rejected Sierra Club's assertion that the Liquefaction Project will induce the production of additional natural gas resources found in shale formations throughout the United States, thus requiring the Commission to consider the environmental impacts of such additional production. The Commission concluded that any potential impacts associated with additional production are not reasonably foreseeable as contemplated by the Council on Environmental Quality (CEQ) regulations implementing NEPA, and therefore were not considered in the EA.<sup>7</sup> The April 16 Order found that, with the conditions imposed in the order, the Liquefaction Project was not inconsistent with the public interest.

## **II. Request for Rehearing**

7. Sierra Club argues that the Commission was "arbitrary and capricious" in authorizing the Liquefaction Project because it: (1) failed to consider the Liquefaction Project's reasonably foreseeable indirect effect of inducing additional shale natural gas production and the associated environmental impacts;<sup>8</sup> (2) failed to prepare an Environmental Impact Statement (EIS) that comprehensively considered project impacts to air quality, land and water resources, and greenhouse gas (GHG) emissions, as well as a more thorough analysis of alternatives and mitigation; and (3) erroneously concluded, without adequate environmental analysis, that the Liquefaction Project was not inconsistent with the public interest. Sierra Club seeks a stay of construction pending Commission and judicial review in this proceeding.

## **III. Discussion**

8. Sierra Club asserts that the EA is deficient because it failed to analyze the project's "indirect effect of inducing natural gas production," and that the Commission erred in concluding that "it was not 'reasonably foreseeable' that exporting 2.2 billion cubic feet of LNG per day...would induce additional natural gas production."<sup>9</sup> Sierra Club states that NEPA requires agencies to conduct "reasonable forecasting," and that induced natural gas production is indeed reasonably foreseeable, citing to data and

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<sup>7</sup> April 16 Order, 139 FERC ¶ 61,039 at PP 94-99.

<sup>8</sup> Sierra Club asserts that indirect effects include increased volatile organic compounds, sulfur dioxide, risks to ground and surface water from fracturing, industrialization, and fragmentation of landscapes and habitats from well pads as well as significant greenhouse gas emissions (mainly methane) from induced production and operation of the Liquefaction Project itself.

<sup>9</sup> Rehearing Request at 4.

information from the Energy Information Administration (EIA).<sup>10</sup> Sierra Club adds that the Commission could have provided a rough estimate of the amount of air emissions, water required, and land associated with the additional production to achieve 2.2 Bcf per day, or a fraction thereof, of exports as well as the gas consumed at the Liquefaction Project.<sup>11</sup>

9. This issue was fully addressed in the April 16 Order, and we find no cause to revisit the matter in great detail. We note that in its rehearing request, Sierra Club misstates the findings set forth in the April 16 Order. The Commission did not conclude that it was not “reasonably foreseeable” that the Liquefaction Project would induce increased natural gas production; rather, the order stated that 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. Moreover, while it may be the case that additional shale gas development will result from the Liquefaction Project, the amount, timing and location of such development activity is simply unknowable at this time.

10. The April 16 Order added that an overall increase in nationwide production of shale gas may occur for a variety of reasons, but the location and subsequent production activity is unknown, and too speculative to assume based on the interconnected interstate natural gas pipeline system.<sup>12</sup> Here, the pipeline interconnects that will provide natural gas to the Liquefaction Project cross both shale and conventional gas fields. Specifically, Sabine Pass will receive natural gas at its interconnection with the Creole Trail Pipeline, which interconnects with other pipelines in the interstate grid. These interconnecting pipeline systems span from Texas to Illinois to Pennsylvania and New Jersey, and cross multiple shale gas plays, as well as conventional gas plays.<sup>13</sup> In addition, each of these interconnecting pipeline systems has a developed network of interconnects with other gas transmission pipeline companies that may cross additional gas plays. We also noted that the Liquefaction Project does not depend on additional shale gas production which may

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<sup>10</sup> Sierra Club notes that EIA estimates the impact of exporting natural gas on domestic energy markets, *i.e.*, on average shale gas will provide a 72 percent increase in domestic gas production. Rehearing at 6 (*citing* EIA study, *Effect of Increased Natural Gas Exports on Domestic Energy Markets*, January 2012, at 11).

<sup>11</sup> Rehearing Request at 7.

<sup>12</sup> April 16 Order, 139 FERC ¶ 61,039 at P 98.

<sup>13</sup> *Id.* P 97.

occur for reasons unrelated to the project, and over which the Commission has no control because it has no jurisdiction over the permitting, siting, construction or operation of natural gas wells.<sup>14</sup>

11. The Commission recently addressed a similar issue in *Central New York Oil and Gas Company, LLC*, in which we held that the extent and location of future Marcellus Shale wells and the associated development were not reasonably foreseeable with respect to a proposed 39-mile long pipeline located in Pennsylvania, in the heart of Marcellus Shale development.<sup>15</sup> We found that, while the Pennsylvania Department of Environmental Protection had issued, and was continuing to issue, thousands of Marcellus well permits, it was unknown if, or when, any of these wells will be drilled, much less what the associated infrastructure and related facilities may be for those wells ultimately drilled. In short, we concluded that the Commission faces too many uncertainties about future well development to assist in our decisionmaking process.

12. In the instant case, “induced” shale development and its associated impacts are even more attenuated from the Liquefaction Project than in *Central New York*. In the latter proceeding, the Commission was asked to consider future development which might occur in a relatively confined area: the Marcellus Shale. Here, wells which could produce gas that might ultimately flow to the Liquefaction Project might be developed in any of the numerous shale plays that exist in most of the eastern United States.<sup>16</sup>

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<sup>14</sup> Id. P 98.

<sup>15</sup> *Central New York Oil and Gas Company, LLC*, 137 FERC ¶ 61,121 (2011), *reh’g denied*, 138 FERC ¶ 61,104 (2012), *aff’d*, *Coalition for Responsible Growth and Resource Conservation, et al. v. FERC*, No. 12-566, 2012 U.S. App. LEXIS 11847 (2nd Cir. June 12, 2012) (*Central New York*).

<sup>16</sup> April 16 Order, 139 FERC ¶ 61,039 at P 97. While Sabine Pass’s application stated that the Liquefaction Project will support increased shale production, no specific shale play is identified. Moreover, Sierra Club repeats on rehearing that the EA’s statement of the purpose of the export terminal is that it will “allow further development of unconventional (particularly shale gas-bearing formation) sources in the United States.” Rehearing Request at 5. However, as stated in the April 16 Order—with no rebuttal from Sierra Club—the cited EA language is a restatement of purpose and need as articulated by Sabine Pass; the EA addressed the proposal to construct and operate facilities to add liquefaction capability for domestic natural gas supplies at an existing LNG terminal. *See* April 16 Order, 139 FERC ¶ 61,039 at P 47.

13. Even if the Commission was able to confidently state that the Liquefaction Project will induce shale development in a particular area, the April 16 Order is clear that any *impacts* which may result from future shale development are not “reasonably foreseeable” as defined by the CEQ regulations. As in *Central New York*, the location, scope and timing of future wells that may ultimately be drilled, and the associated development (such as well pads, roads and other infrastructure) are unknowable at this time. Accordingly, we are not in a position to provide a meaningful analysis of the potential environmental impacts of such development.<sup>17</sup>

14. Sierra Club’s reliance on the EIA report is misplaced. EIA prepared its report in response to a request from DOE/FE as one input to DOE/FE’s assessment of the potential impact of current and possible applications to export domestically produced natural gas. The EIA report is a general economic forecast over twenty-five years with four export demand scenarios, none of which is specific to the Liquefaction Project. The report cautions that projections of 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.”<sup>18</sup> Accordingly, the report does not assist the Commission in reasonably estimating how much of the Liquefaction Project’s export volumes will come from current versus future shale gas production, or where and when that future production to supply export volumes to the Liquefaction Project may be located, much less any associated environmental impacts of such new shale production.<sup>19</sup>

15. Sierra Club’s reliance on *Northern Plains Resource Council v. Surface Transportation Board*<sup>20</sup> as support for its contention that induced gas production is a reasonably foreseeable effect of the Liquefaction Project is also misplaced. In *Northern Plains*, the court held that the Surface Transportation Board should have considered the cumulative impacts of coal bed methane (CBM) well development as part of its NEPA analysis of a proposed 89-mile rail line intended to serve specific new coal mines in three

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<sup>17</sup> As we noted in the April 16 Order, CEQ guidance to agencies provides that “it is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful.” See *Considering Cumulative Effects Under the National Environmental Policy Act* (CEQ 1997, at 8, Table 1-2).

<sup>18</sup> EIA Report at 3.

<sup>19</sup> April 16 Order, 139 FERC ¶ 61,039 at P 98.

<sup>20</sup> *Northern Plains Resource Council v. Surface Transportation Board*, 668 F.3d 1067, 1081 (9th Cir. 2011) (*Northern Plains*).

counties in Montana. However, in that case the Bureau of Land Management (BLM) had already analyzed reasonably foreseeable CBM well development in the vicinity of the proposed rail line as part of an earlier, programmatic EIS that evaluated the impacts of CBM development in the Powder River Basin. The EIS identified the number of CBM wells that were reasonably foreseeable over the next 20 years, and projected the number of field compressors, miles of gathering lines, and other facilities needed to support the wells, including information on wells and facilities to be located in the three counties the railroad would cross.

16. Unlike the situation presented in *Northern Plains*, the Commission has no similar information about the timing, location and scope of future shale well development associated with the Liquefaction Project. Significantly, the *Northern Plains* court pointed out that the Surface Transportation Board was aware that future coal mine development in the project area was imminent because the Board relied on such development to justify the financial soundness of the proposed rail line. Here, as noted above, it is unknown how much, if any, new shale gas production the Liquefaction Project will rely on for its export volumes, much less the location or timing of such production.

17. While Sierra Club correctly notes that NEPA requires agencies to engage in “reasonable forecasting,”<sup>21</sup> the *Northern Plains* case establishes that while agencies must engage in reasonable forecasting in considering cumulative impacts, 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.”<sup>22</sup>

18. Sierra Club also challenges the Commission’s determination that induced shale gas production is too speculative for a NEPA analysis by noting that the Commission “imposed a higher standard of proof on environmental concerns than FERC and DOE/FE impose on their analyses of purported economic benefits.”<sup>23</sup> Sierra Club asserts that this conflicts with *Scientists’ Institute for Public Information, Inc. v. Atomic Energy*

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<sup>21</sup> Rehearing Request at 4, citing *Scientists’ Institute for Public Information, Inc. v. Atomic Energy Commission*, 481 F.2d 1079, 1092 (D.C. Cir. 1973).

<sup>22</sup> *Northern Plains*, 668 F.3d 1067 (9<sup>th</sup> Cir. 2011). See also *Natural Res. Defense Council v. Callaway*, 524 F.2d 79, 90 (2d Cir. 1975) (holding that an agency need not “consider other projects so far removed in time or distance from its own that the interrelationship, if any, between them is unknown or speculative”).

<sup>23</sup> Rehearing at 6.

*Commission* (AEC) which it argues prohibits an agency from using “one standard of proof in assessing a project’s benefits and another in assessing its costs.”<sup>24</sup>

19. Although Sierra Club’s argument is not entirely clear, it would appear that it challenges the fact that the economic benefits of increased natural gas production was included in DOE’s NGA section 3 public interest analysis authorizing the Sabine Pass export, but that the environmental impacts of the increased production were not similarly considered in the NEPA analysis.

20. Sierra Club conflates two different statutory obligations: under NEPA, agencies are required to consider, among other things, the “reasonably foreseeable” environmental impacts of a proposed project in determining whether the project will have a “major significant impact on the quality of the human environment.” Under NGA section 3, agencies must determine whether the requested authorization would be inconsistent with the public interest. Thus, DOE may well have quantified the overall economic benefits of additional shale gas production for purposes of meeting its separate NGA section 3 public interest finding, notwithstanding the fact that the environmental impacts of additional gas production cannot be similarly quantified because the impacts are not reasonably foreseeable.<sup>25</sup>

21. In any event, Sierra Club’s reliance on *Scientists’ Institute for Public Information, Inc.* is unavailing. There, the D.C. Circuit faulted the Atomic Energy Commission for failing to prepare *any* NEPA analysis for its proposed liquid metal fast breeder reactor program. The court noted that, while the Atomic Energy Commission had prepared a complex cost/benefit analysis in attempting to justify the proposed program, it failed to attempt to include a consideration of the environmental costs and benefits associated with the proposed program.

22. Unlike the Atomic Energy Commission, staff prepared a NEPA analysis that thoroughly considered the potential environmental impacts of the Liquefaction Project which informed our decision that the construction and operation of the Liquefaction Project is not inconsistent with the public interest. Moreover, the D.C. Circuit was persuaded that a NEPA analysis should have been prepared because the Atomic Energy

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<sup>24</sup> *Id.*, citing *Scientists’ Institute for Public Information, Inc.*, 481 F.2d 1079 (D.C. Cir. 1973).

<sup>25</sup> As explained earlier, the Secretary of DOE, not the Commission, has the authority to approve or disapprove the import or export of the LNG commodity itself; accordingly, to the extent Sierra Club raises concerns over DOE’s section 3 public interest finding, the Commission must decline to address them.

Commission had existing detailed estimates on the amount of waste, the amount of land area necessary for storage of the waste, as well as “much information on alternatives to the program and their environmental effects.” Here, the Commission has no existing detailed or quantifiable information with respect to induced shale production that would assist us in a meaningful analysis.<sup>26</sup>

### **Need for an EIS**

23. Sierra Club asserts that an EIS should have been prepared for the Liquefaction Project based on the project’s “significant impacts,” including impacts from additional natural gas production and greenhouse gas emissions resulting from induced natural gas production. As discussed at length here and in the April 16 Order, we find that the Commission is not required to consider the impacts of induced natural gas production, and need not address this argument.

24. We also reject Sierra Club’s assertion that the Liquefaction Project itself will have “significant” GHG emissions impacts, thus necessitating preparation of an EIS. Sierra Club argues that the project will emit GHGs at a level much higher than the level at which CEQ, in its draft guidance on NEPA and GHG emissions, advises agencies to consider GHGs. Sierra Club asserts that, “at the very least, the magnitude of these emissions...raises a substantial question as to whether these emissions will have a significant impact.”<sup>27</sup>

25. CEQ’s draft guidance makes clear that its suggested triggering level for considering GHG emissions in a NEPA analysis is not an indicator of “significance” for NEPA purposes; rather, it is an indicator that a quantitative or qualitative analysis of GHG emissions may be meaningful to decisionmakers.<sup>28</sup> To that end, the EA quantifies the project’s contribution to GHGs,<sup>29</sup> analyzes the climate change issues associated with

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<sup>26</sup> Sierra Club also argues that additional shale gas development attributable to the Liquefaction Project is not speculative, because another nearby LNG export application “predicts” that increased gas will occur in the Eagle Ford, Barnett, and Haynesville Shales. Rehearing Request at 6. We will not rely on supply predictions from another company’s export application for a different proposal at a different location under different circumstances.

<sup>27</sup> Rehearing Request at 10.

<sup>28</sup> CEQ *Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions* (February 18, 2010).

<sup>29</sup> EA at Section 2.7.

construction and operation of the project, and alternatives for minimizing GHG emissions.<sup>30</sup> The EA also identifies mitigation measures to reduce GHG emissions, including the selection of turbines which have a better thermal efficiency and reduced CO2 emissions, all of which Sabine Pass must comply with.

26. Sierra Club also argues that the Liquefaction Project is “highly controversial,” thus requiring preparation of an EIS.<sup>31</sup> Sierra Club asserts that the impacts of LNG export are “plainly highly controversial” in that “there is dispute as to the magnitude of their effects.”<sup>32</sup>

27. For an action to qualify as “highly controversial” for NEPA purposes, there must be a “dispute over the size, nature or effect of the action, rather than the existence of opposition to it.”<sup>33</sup> Accordingly, a controversy does not exist merely because individuals or groups vigorously oppose, or have raised questions about, an action.<sup>34</sup>

28. Sierra Club appears to seek a much broader, nationwide review of the costs and benefits of LNG export and its impacts. As an example, it asserts that “FERC and DOE/FE must consider alternatives to the proposal which would better serve the public interest, broadly analyzing other approaches to structuring LNG exports and gas use

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<sup>30</sup> EA at 98-100.

<sup>31</sup> The CEQ regulations provide that the degree to which the effects on the quality of the human environment are likely to be highly controversial is one of ten factors relating to the intensity of the project that determines whether a project *significantly* affects the quality of the human environment. See 40 C.F.R. § 1508.27(b)(4) (2011).

<sup>32</sup> Sierra Club cites to: an undated report of the U.S. House of Representatives Committee on Natural Resources on *Drill Here Sell There Pay More, the Painful Price of Exporting Natural Gas*; a DOE letter to Congressman Edward Markey concerning regulation of gas exports (dated February 24, 2012); copies of Congressman Markey’s legislation, H.R. 4024 (suspension of approvals of LNG export terminals) and 4025 (prohibiting export of gas produced on leases on federal lands); News articles, “LNG: Prospect of Export Boom Vexes Both Political Parties, but in Different Ways” (May 15, 2012), “LNG Export? Whoever Would Have Gussed” (April 18, 2012); and Politico, “Mixed Response to Sabine Pass” (April 23, 2012).

<sup>33</sup> *Friends of the Ompompanoosuc v. FERC*, 968 F.2d 1549, 1557 (2d Cir. 1992).

<sup>34</sup> *Id.*

generally, given exports' sweeping effects on the economy.”<sup>35</sup> This expansive policy proposal is not before the Commission. What is before us is the Liquefaction Project, which will be located entirely within the footprint of the previously approved and currently operating Sabine Pass LNG terminal site. As a result, the project's environmental impacts are relatively small in number and well-defined. The fact that Sierra Club disputes the Commission's finding that it cannot, nor is it required to, undertake a comprehensive analysis of LNG exports and their associated potential environment impacts, does not amount to a “controversy” requiring the preparation of an EIS.

### **Public Interest Determination**

29. Sierra Club challenges the April 16 Order's finding that the project is not inconsistent with the public interest. Sierra Club asserts that the Commission cannot reach such a conclusion until it has completed an adequate NEPA review which includes a thorough consideration of the impacts of induced shale production.

30. We disagree. For reasons explained here and in the April 16 Order, the EA did not consider the impacts of induced shale production. The EA's thorough analysis of the potential impacts to geology, soils, water resources, wetlands, vegetation, fisheries, wildlife, threatened and endangered species, land use, recreation, visual resources, socioeconomics, cultural resources, air quality, noise, reliability and safety, and climate change, as well as the conditions and mitigation measures set forth in the April 16 Order, indicate that the Liquefaction Project will not have a significant impact on the quality of the human environment. Accordingly, and for all of the reasons set forth in the April 16 Order, we affirm our finding that the Liquefaction Project is not inconsistent with the public interest.

### **Alternatives Analysis**

31. Sierra Club contends that, as lead agency, the Commission must ensure that the December 2011 EA satisfies DOE's NEPA obligations, including what Sierra Club argues is DOE's requirement to consider inducement of gas production.<sup>36</sup> Sierra Club argues that, whether or not the EA's consideration of the “no action,” “alternative energy source,” and “alternative [export] system” alternatives is adequate for the siting and construction of the Liquefaction Project, the alternatives analysis is “not sufficient for

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<sup>35</sup> Rehearing Request at 12.

<sup>36</sup> Rehearing Request at 4.

DOE/FE's purposes."<sup>37</sup> Sierra Club adds that as the lead agency, the Commission "must prepare an EIA [sic] that allows DOE/FE to consider a wide range of alternatives that relate specifically to its broad public interest mandate."<sup>38</sup>

32. As noted above, DOE has separate statutory responsibilities with respect to authorizing the export of LNG from Sabine Pass; thus, it has an independent legal obligation to comply with NEPA.<sup>39</sup> As also noted, DOE participated as a cooperating agency in the Commission's environmental assessment. DOE has conditioned its authorization for Sabine Pass to export natural gas to non-Free Trade Agreement nations "on issuance by DOE/FE of a finding of no significant impact or a record of decision pursuant to NEPA."<sup>40</sup>

### **Request for Stay**

33. Sierra Club requests a stay of the April 16 Order and the May 10, 2012 letter order authorizing initial site preparation pending resolution of its rehearing request and any judicial appeal of this order on rehearing. Since we are now acting on rehearing and there is no pending judicial appeal of this order, we will dismiss as moot Sierra Club's request for a stay.

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<sup>37</sup> Rehearing Request at 13.

<sup>38</sup> *Id.* Sierra Club sets forth, "at a minimum," seven alternatives that "must be considered," including: whether to deny export proposals altogether; whether to delay, deny, or condition exports based upon their effect on the U.S. utility market; and whether, consistent with the EIA study, exports, if allowed, should move forward in smaller quantities or a slower time table. We note that, although Sierra Club provided input throughout this proceeding, it proffers these alternatives for the first time on rehearing.

<sup>39</sup> *See* 40 C.F.R. § 1506.3 (2011). *See also CEQ Forty Most Asked Questions Concerning CEQ's NEPA Regulations, Q. 30*, 46 Fed. Reg. 18,026 (March 23, 1981) (a cooperating agency with jurisdiction by law has an independent legal obligation to comply with NEPA).

<sup>40</sup> *See* Ordering Paragraph (F) of DOE/FE Order No. 2961 for exports to Non-Free Trade Agreement Nations, which provides:

The authorization granted in this Order is conditioned on the satisfactory completion of that environmental review process in FERC Docket No. PF10-24-000 [CP11-72-000] and on issuance by DOE/FE of a finding of no significant impact or a record of decision pursuant to NEPA.

34. In any event, we would have denied Sierra Club's stay request, as the Commission is denying rehearing of the same arguments that Sierra Club raises to justify its request for a stay. When considering stay requests, the Commission considers several factors, including "whether the party requesting the stay will suffer irreparable injury without a stay."<sup>41</sup> If the party requesting a stay is unable to demonstrate that it will suffer irreparable harm absent a stay, the Commission need not consider the other factors.<sup>42</sup>

35. Sierra Club asserts that construction and operation of the Liquefaction Project will "produce irreparable environmental impacts," including impacts of induced shale gas production.<sup>43</sup> As explained in the EA and the April 16 Order, the Commission thoroughly considered the potential environmental effects of the Liquefaction Project, and concluded that, if constructed and operated in accordance with Sabine Pass's application, and in compliance with the environmental conditions and mitigation measures set forth in the April 16 Order, the project would not constitute a major federal action significantly affecting the quality of the human environment. Accordingly, we find that Sierra Club has not demonstrated that it will suffer irreparable harm, and therefore, we would have denied its stay request.<sup>44</sup>

The Commission orders:

(A) Sierra Club's request for rehearing of the April 16, 2012 and May 10, 2012 orders is denied as discussed in the body of this order.

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<sup>41</sup> *Devon Power LLC*, 119 FERC ¶ 61,150 (2007). The other factors are: whether issuing the stay may substantially harm other parties; and whether a stay is in the public interest.

<sup>42</sup> *Id.*

<sup>43</sup> Rehearing at 16-17.

<sup>44</sup> Sierra Club asserts that the Commission has "frequently" granted motions for stay of orders that would authorize construction prior to resolution of motions for rehearing and judicial appeals. However, Sierra Club cites only two cases, both of which are inapposite as the project developer either sought the stay or did not object to the stay: *See Horseshoe Bend Hydroelectric Co.*, 43 FERC ¶ 61,315 (1988) (hydroelectric licensee sought a stay of construction deadline pending an objecting parties' appeal); and *Pacific Power and Light Co.*, 31 FERC ¶ 61,077 (1985) (winning bidder for project did not object to a stay pending the losing bidders' appeal).

(B) Sierra Club's request for a stay of the April 16, 2012 and May 10, 2012 orders is dismissed as moot.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.