ORAL ARGUMENT NOT YET SCHEDULED

No. 16-1253

IN THE

United States Court of Appeals for the District of Columbia Circuit

SIERRA CLUB,

Petitioner,

v.

UNITED STATES DEPARTMENT OF ENERGY,

Respondent,

and

CHENIERE MARKETING, LLC, CORPUS CHRISTI LIQUEFACTION, LLC and AMERICAN PETROLEUM INSTITUTE,

Intervenor-Respondents.

On Petition for Review of Orders of the U.S. Department of Energy

BRIEF FOR INTERVENOR-RESPONDENTS CHENIERE MARKETING, LLC, AND CORPUS CHRISTI LIQUEFACTION, LLC

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February 13, 2017

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. PARTIES AND AMICI

All parties, intervenors, and amici appearing in this Court are listed in the Brief for Respondent United States Department of Energy ("DOE").

B. RULINGS UNDER REVIEW

References to the rulings at issue appear in the Brief for Respondent DOE.

C. RELATED CASES

This case has not previously been before this Court or any other court. Four related cases, within the meaning of D.C. Cir. R. 28(a)(1)(C), are currently pending in this Court. In each of the following cases, Sierra Club has filed a petition for review of orders by DOE that grant long-term, multi-contract authorization for the export of liquefied natural gas ("LNG") to non-free trade agreement nations:

(1) *Sierra Club v. Dep't of Energy*, D.C. Cir. No. 15-1489, involving LNG exports from the Freeport LNG Terminal located on Quintana Island, Texas; briefing has been completed and oral argument was held on February 2, 2017;

(2) *Sierra Club v. Dep't of Energy*, D.C. Cir. No. 16-1186, involving LNG exports from the Cove Point LNG Terminal located in Calvert County, Maryland; briefing is scheduled for completion on February 14, 2017;

(3) *Sierra Club v. Dep't of Energy*, D.C. Cir. No. 16-1252, involving LNG exports from the Sabine Pass LNG Terminal located in Cameron Parish, Louisiana; briefing is scheduled for completion on March 31, 2017; and

(4) *Sierra Club v. Dep't of Energy*, D.C. Cir. No. 16-1426, involving LNG exports from the Sabine Pass LNG Terminal located in Cameron Parish, Louisiana; the petition was filed on December 19, 2016.

The Court has directed the Clerk to schedule argument in this case, No. 16-1186, and No. 16-1252 before the same panel on the same day.

Further, this Court has issued decisions in four cases involving orders from the Federal Energy Regulatory Commission ("FERC") that authorized construction of projects at issue in the foregoing cases. This Court has denied the petition in each of the following cases:

(1) *EarthReports, Inc. v. FERC*, 828 F.3d 949 (D.C. Cir. 2016) (denying petition challenging FERC's conditional authorization to convert Cove Point LNG Terminal from import to export facility);

(2) *Sierra Club v. FERC*, 827 F.3d 36 (D.C. Cir. 2016) (denying petition challenging FERC's authorization to redesign Freeport LNG Terminal);

(3) *Sierra Club v. FERC*, 827 F.3d 59 (D.C. Cir. 2016) (denying petition to challenge FERC's authorization to improve Sabine Pass LNG Terminal); and

(4) *Sierra Club v. FERC*, No. 15-1133, 2016 WL 6915537 (D.C. Cir. Nov. 4, 2016) (denying petition challenging FERC's authorization to construct LNG import/export facility and pipeline, near Corpus Christi, Texas, at issue in this case).

Respectfully submitted,

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CORPORATE DISCLOSURE STATEMENT

Cheniere Marketing, LLC, a Delaware limited liability company with a primary place of business in Houston, Texas, is a wholly-owned direct subsidiary of Cheniere Energy, Inc. (NYSE MKT: LNG), a publicly-traded corporation that is a developer of liquefied natural gas terminals and natural gas pipelines on the Gulf Coast. No publicly-held corporation has a 10% or greater ownership interest in Cheniere Energy, Inc.

Corpus Christi Liquefaction, LLC, a Delaware limited liability company with a primary place of business in Houston, Texas, is a wholly-owned indirect subsidiary of Cheniere Energy, Inc. The other direct and indirect subsidiaries of Cheniere Energy, Inc., that are parent companies of Corpus Christi Liquefaction, LLC, are Cheniere Corpus Christi Holdings, LLC; Cheniere CCH Holdco I, LLC; and Cheniere CCH Holdco II, LLC.

Respectfully submitted,

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2012 NERA Study	NERA Economic Consulting, *Macroeconomic Impacts of LNG Exports from the United States* (2012)
Addendum	U.S. Department of Energy, *Addendum to Environmental Review Documents Concerning Exports of Natural Gas from the United States* (Aug. 15, 2014)
AR	Administrative Record
Authorization Order	*Cheniere Marketing, LLC and Corpus Christi Liquefaction, LLC*, DOE/FE Order No. 3638, FE Docket No. 12-97-LNG (May 12, 2015)
Cheniere	Intervenor-Respondents Cheniere Marketing, LLC, and Corpus Christi Liquefaction, LLC
Bcf/yr	Billion cubic feet per year
CEQ	Council on Environmental Quality
DOE	U.S. Department of Energy
EIA	U.S. Energy Information Administration
EIS	Environmental Impact Statement
EPA	U.S. Environmental Protection Agency
FERC	Federal Energy Regulatory Commission
FTA nations	Free Trade Agreement Nations

JA	Joint Appendix
Life Cycle Perspective	U.S. Department of Energy, *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States* (2014)
Liquefaction Project	Corpus Christi Liquefaction Project, FE Docket No. 12-97-LNG
LNG	Liquefied Natural Gas
NEMS	National Energy Modeling System
NEPA	National Environmental Policy Act
NERA	NERA Economic Consulting
NGA	Natural Gas Act
Rehearing Order	*Cheniere Marketing, LLC and Corpus Christi Liquefaction, LLC*, DOE/FE Order No. 3638-A, FE Docket No. 12-97-LNG (May 26, 2016)
Sierra Club	Petitioner Sierra Club
Tcf	Trillion cubic feet

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STATUTES AND REGULATIONS

Except for those contained in the Addendum, all applicable statutes and regulations are contained in the briefs for petitioner and respondent.

STATEMENT OF THE CASE

A. STATUTORY AND REGULATORY BACKGROUND.

1. Authority Over LNG Exports.

Section 3 of the Natural Gas Act ("NGA") prohibits exports of U.S. natural gas without an authorizing order. 15 U.S.C. § 717b(a). This authorization

authority now resides with DOE. *See* 42 U.S.C. §§ 7151(b), 7172(f); 49 Fed. Reg. 6684, 6688 (Feb. 22, 1984); DOE, Re-Delegation Order No. 00-006.02, § 1.3.A (Nov. 17, 2014). But DOE has delegated to the Federal Energy Regulatory Commission ("FERC") the separate authority over the construction, operation and siting of export facilities, and with respect to new facilities, the place of export. DOE, Delegation Order No. 00-004.00A, § 1.21.A (May 16, 2006); *see also* 43 Fed. Reg. 47,769, 47,772 (Oct. 17, 1978).

2. Environmental Review Under NEPA.

The National Environmental Policy Act ("NEPA") requires a federal agency to prepare an environmental impact statement ("EIS") before undertaking a major action significantly affecting the quality of the environment." 42 U.S.C. § 4332(C)(i). "NEPA's mandate 'is essentially procedural.'" *Gruneweld v. Jarvis*, 776 F.3d 893, 903 (D.C. Cir. 2015) (quoting *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 558 (1978)). It requires agencies to take a "hard look" at foreseeable environmental consequences, but does not mandate substantive results. *Id.*

Under Council on Environmental Quality ("CEQ") regulations, an EIS should discuss a proposed action's "[d]irect effects" and "[i]ndirect effects." 40 C.F.R. § 1502.16. "Direct effects" are "caused by the action and occur at the same time and place." *Id.* § 1508.8(a). "Indirect effects" are "caused by the action and

are later in time or farther removed in distance, but are still reasonably foreseeable." *Id.* § 1508.8(b). An agency should also consider "[c]umulative impact," which is "the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." *Id.* §§ 1508.7, 1508.25(c).

The NGA designates FERC as the "lead agency" for purposes of NEPA compliance for § 3 applications. 15 U.S.C. § 717n(b)(1). The lead agency supervises the preparation of an EIS. 40 C.F.R. § 1501.5(a). A cooperating agency (here, DOE) participates in the preparation of the EIS, submits comments to the lead agency, and may ultimately adopt the EIS to fulfill its own NEPA responsibilities if satisfied the EIS adheres to the cooperating agency's comments and recommendations. *Id.* §§ 1501.6, 1503.2, 1503.3, 1506.3.

3. DOE's Public Interest Determination.

For liquefied natural gas ("LNG") export authorizations, NGA § 3 distinguishes between exports to nations with specified free trade agreements ("FTA nations"), and exports to non-FTA nations. 15 U.S.C. § 717b(a), (c). Applications for FTA-nation exports "shall be granted without modification or delay." *Id.* § 717b(c). As to non-FTA nations, DOE "may" grant export applications "with such modification and upon such terms and conditions as [it] may find necessary or appropriate." *Id.* § 717b(a).

DOE's discretion to deny export authorization to non-FTA nations is narrow. NGA § 3 directs that DOE "shall" authorize LNG exports unless it "finds that the proposed exportation … will not be consistent with the public interest." *Id.* This establishes a presumption that exports to non-FTA nations are in the public interest. *See W. Va. Pub. Servs. Comm'n v. DOE*, 681 F.2d 847, 856 (D.C. Cir. 1982) ("[S]ection 3 sets out a general presumption favoring [export] authorization…."); *Panhandle Producers & Royalty Owners Ass'n v. Econ. Regulatory Admin.*, 822 F.2d 1105, 1111 (D.C. Cir. 1987) ("A presumption favoring [export] authorization, then, is completely consistent with, if not mandated by, the statutory directive.").

B. FACTUAL BACKGROUND.

1. FERC Proceedings.

In 2005, FERC authorized construction of an LNG import terminal facility and related pipeline near Corpus Christi, Texas. In light of unfavorable market conditions, however, neither facility was constructed. In 2012, due to market changes, Corpus Christi Liquefaction, LLC, and Cheniere Corpus Christi Pipeline, L.P., sought FERC authorization to site, construct, and operate the Corpus Christi Liquefaction Project and associated pipeline (together, "the Project"), at the same general locations as the previously-authorized import facilities. *See* 77 Fed. Reg.

58,368 (Sept. 20, 2012). The bi-directional project will include facilities for both liquefying domestic natural gas for export and regasifying imported LNG.

On October 8, 2014, FERC issued its final EIS. [AR81]. This 630-page document extensively analyzed all reasonably foreseeable environmental impacts—including geology; soils and sediments; water resources; wetlands; vegetation; wildlife and aquatic resources; threatened, endangered, and other special status species; land use, recreation, and visual resources; socioeconomics; cultural resources; air quality and noise; reliability and safety; and the cumulative impacts of other projects in the area. But FERC explained that NEPA does not require consideration of speculative environmental impacts from putative export-induced increases in natural gas production because such impacts are not reasonably foreseeable, and cannot be described with sufficient specificity to make their consideration useful to reasoned decisionmakers. [*Id.* at 4-212].

In December 2014, FERC issued an order authorizing the siting and construction of the Project. [AR85]. It found that the environmental impacts of a putative export-induced increase in natural gas production "are neither sufficiently causally related to the project to warrant a detailed analysis, nor are the potential environmental impacts reasonably foreseeable." [*Id.* ¶ 120].

Sierra Club sought rehearing, which FERC denied. [AR94]. Sierra Club petitioned this Court for review of the FERC orders, and the Court denied that

petition. *See Sierra Club v. FERC*, --- F. App'x ---, 2016 WL 6915537 (D.C. Cir. Nov. 4, 2016) (per curiam).

2. DOE Proceedings.

a. Procedural History.

In separate proceedings before DOE, Cheniere Marketing, LLC and Corpus Christi Liquefaction (together, "Cheniere") sought authorization to export LNG from the Project. Sierra Club intervened. In May 2015, DOE issued its Final Opinion and Order ("Authorization Order"), authorizing the export of 767 billion cubic feet per year ("Bcf/yr") of LNG from the Project to non-FTA nations. *See* [AR95]. After independent review, DOE adopted the EIS and conditioned its authorization on the 104 environmental mitigation measures recommended in the EIS. [*Id.* at 10-11].

DOE rejected Sierra Club's objections. First, DOE concluded "the environmental impacts resulting from production activity induced by LNG exports to non-FTA countries are not 'reasonably foreseeable' within the meaning of [NEPA]." [*Id.* at 194]. Second, it found that its analysis "took into account all reasonably foreseeable cumulative environmental impacts" relevant to the LNG exports at issue. [*Id.* at 195]. Finally, exercising its authority under NGA § 3, DOE found that any potential negative impacts "are outweighed by the likely net economic benefits and by other non-economic or indirect benefits." [*Id.* at 205].

Accordingly, Sierra Club had failed to overcome the presumption in favor of export authorization. [*Id.* at 205-06].

Sierra Club sought rehearing, which DOE denied. [AR111] ("Rehearing Order"). Sierra Club has petitioned this Court for review of the Authorization Order and the Rehearing Order.

b. LNG Export Studies.

To assist its public interest review of LNG export applications, DOE engaged the U.S. Energy Information Administration ("EIA") and NERA Economic Consulting ("NERA") to study potential economic impacts of LNG exports. DOE eventually issued four such studies.

First, in January 2012, EIA published the first of a two-part "export study," intended to inform DOE's duty to ensure that LNG export authorizations do not "lead to a reduction in the supply of natural gas needed to meet essential domestic needs." 77 Fed. Reg. 73,627, 73,628 (Dec. 11, 2012). This study examined possible implications of LNG exports on domestic energy markets under various hypothetical scenarios, which the agency cautioned "were not forecasts of either the ultimate level, or rates of increase, of exports." *Id.* The projections were "not statements of what ***will*** happen but of what ***might*** happen, given the assumptions and methodologies used." [AR23 at ii].

The study generally found that LNG exports would lead to higher domestic natural gas prices, increased domestic natural gas production, and reduced domestic natural gas consumption. But it cautioned that "projections of energy markets over a 25-year period are highly uncertain and subject to many events that cannot be foreseen," noting that "[t]his is particularly true in projecting the effects of exporting significant natural gas volumes," due to various factors that made the underlying modeling unsuited to the task. [*Id.* at 3]. In 2014, DOE produced an updated version of this study with similar conclusions. [AR83].

Second, in 2012, NERA issued a report analyzing the "macroeconomic impact of LNG exports on the U.S. economy" under a range of scenarios. 77 Fed. Reg. at 73,628. Across all scenarios, this study projected net economic benefits to the U.S. from LNG exports, with those benefits "increas[ing] as the level of LNG exports increased." [AR24 at 1]. The study also concluded that the peak gas export levels specified by EIA for its 2012 study—as well as the resulting price increases—are "not likely." [*Id.* at 9]. It, too, acknowledged "great uncertainties about how the U.S. natural gas market will evolve." [*Id.* at 21].

Third, DOE conducted a review of existing literature regarding potential environmental issues associated with unconventional natural gas exploration and production activities. [AR76]. After receiving comments on a draft, in 2014 DOE issued the final report, the *Addendum to Environmental Review Documents*

Concerning Exports of Natural Gas from the United States ("*Addendum*"). DOE emphasized that the *Addendum* was "not required by NEPA," and agreed with FERC that upstream "environmental impacts resulting from production activity induced by LNG exports … are not 'reasonably foreseeable.'" [AR77 at 125].

Finally, contemporaneously with the *Addendum*, DOE issued the *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States* ("*Life Cycle Perspective*"), attempting to compare lifecycle emissions from U.S. LNG exports used for electric power generation in Europe and Asia with emissions from coal-generated electricity. [AR62]. While this study found that lifecycle emissions attributable to exported LNG were lower under most scenarios, it emphasized "uncertainty in the underlying modeled data," and stated that its approach did "not imply the likelihood that LNG export or import will occur" at a given location. [*Id*. at 9, 18].

SUMMARY OF ARGUMENT

The EIS, adopted by DOE, considered numerous environmental impacts that were reasonably foreseeable and proximately caused by the export authorization under review. But it reasonably explained that the theoretical impacts of future emissions from increased gas production and coal consumption—allegedly induced by price effects that might be caused by exports from the Project—are not cognizable "indirect effects" under NEPA because they are not reasonably

foreseeable and are too tenuously connected to the export authorization. DOE reasonably concluded that its decision would not be meaningfully informed by speculative attempts to forecast unknown amounts and types of emissions, in unknown locations throughout the world, that may or may not occur over the next quarter-century, depending on myriad economic, regulatory and technological developments that are unrelated to DOE's limited regulatory role.

DOE reasonably determined that such impacts are too speculative to be reasonably foreseeable. Natural gas production may increase or decrease for reasons unrelated to the Project. The location, timing, and amounts of such production are unknown and subject to control by other state and federal agencies, as well as foreign sovereigns. And the net worldwide impacts of exporting natural gas cannot reasonably be projected. The various DOE studies cited by Sierra Club did not, and could not, make specific predictions regarding gas production. Even if some unknown amount of additional production might occur, DOE reasonably concluded that its environmental impacts are not reasonably foreseeable.

Nevertheless, to the extent DOE was required to engage in such speculation under NEPA (and it was not), the various environmental studies provide as much information as could reasonably be expected and were expressly considered by DOE when making its decision. NEPA could require no more. And as this Court has already held with respect to FERC authorizations for export terminals—

including for the Corpus Christi project—DOE was not required to consider "cumulative effects" of all export authorizations, because NEPA only requires consideration of actions occurring in the same geographic region as the action under review.

Finally, DOE's public interest determination was not arbitrary or capricious, as DOE properly found that Sierra Club had not rebutted the statutory presumption favoring exports. DOE reasonably concluded that the significant benefits of exports were in the public interest and that any environmental issues were more appropriately addressed by the agencies directly tasked with their regulation, rather than by banning exports and forfeiting their substantial benefits.

STANDARD OF REVIEW

Cheniere agrees with the standard of review articulated by DOE. *See* DOE Br. 31-32.

ARGUMENT

I. DOE'S NEPA ANALYSIS WAS NOT ARBITRARY OR CAPRICIOUS.

Agencies should evaluate the "[d]irect effects" and "[i]ndirect effects" of a proposed action. 40 C.F.R. § 1502.16. Cognizable indirect effects, however, must be "reasonably foreseeable." *Id.* § 1508.8(b). An effect 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." *City of Dallas v. Hall*, 562

F.3d 712, 719 (5th Cir. 2009) (citation omitted). Reasonably foreseeable effects "do[] not include 'highly speculative harms' that 'distort[] the decisionmaking process' by emphasizing consequences beyond those of 'greatest concern to the public and of greatest relevance to the agency's decision.'" *Id.* (second alteration in original) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 355-56 (1989)); *see Sierra Club v. Marsh*, 976 F.2d 763, 768 (1st Cir. 1992) (agencies "need not consider potential effects that are highly speculative or indefinite").

Thus, while "[r]easonable forecasting" is "implicit in NEPA," NEPA does not require agencies to "foresee the unforeseeable," nor does it "demand forecasting that is 'not meaningfully possible.'" *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1310 (D.C. Cir. 2014) (quoting *Scientists' Inst. for Pub. Info., Inc. v. Atomic Energy Comm'n*, 481 F.2d 1079, 1092 (D.C. Cir. 1973)). To require analysis of "highly speculative [and] indefinite" effects, *Marsh*, 976 F.2d at 768, would "demand what is, fairly speaking, not meaningfully possible." *Nat. Res. Def. Council, Inc. v. Morton*, 458 F.2d 827, 837 (D.C. Cir. 1972).

Under NEPA's "rule of reason," there must also be "a reasonably close causal relationship between the environmental effect and [an] alleged cause." *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004) (quotation marks omitted). As such, "a 'but for' causal relationship is insufficient to make an

agency responsible for a particular effect under NEPA and the relevant regulations." *Id.* NEPA's causal standard "is like the familiar doctrine of proximate cause from tort law." *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983); *see also City of Dallas*, 562 F.3d at 719.

Applying these standards, DOE reasonably concluded that Sierra Club's proposed analysis would embroil the agency in a long chain of speculative reasoning that ultimately would not be meaningful to its decisionmaking process. Sierra Club would require DOE to speculate as to (1) whether, and by how much, additional demand that might result from this export authorization will increase domestic natural gas prices; (2) what amount of additional gas production will result from that unknown price impact; (3) where that production will occur and what its localized and worldwide environmental impacts will be; (4) whether, and in what amounts, gas price increases will spur fuel-switching to coal; (5) where such coal will be produced and used and what its environmental impacts will be; and (6) the net increase (or decrease) in global greenhouse gases arising from export-induced natural gas production, LNG exports, fuel-switching, and coal production, accounting for fuel substitution overseas. DOE reasonably concluded

that this analysis was beyond the scope of its NEPA obligation. That decision is entitled to substantial deference and should be upheld.[1]

A. DOE Reasonably Concluded That Local Impacts From Export-Induced Gas Production Are Not Reasonably Foreseeable.

As DOE explained, "[f]undamental uncertainties constrain [its] ability to foresee and analyze with any particularity the incremental natural gas production that may be induced by permitting exports." [AR95 at 193]. Part of this uncertainty arises from the fact that "[t]he causal relationship Sierra Club posits is an economic one," whereby a decision to authorize LNG exports "may increase the price of natural gas in the United States," and in turn spur additional production. [AR111 at 16]. According to Sierra Club, DOE must "examine the consequences of that potential price increase, including increased domestic production of natural gas and increased consumption of coal, which competes with natural gas as a fuel

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[1] *See, e.g.*, *Wyoming v. U.S. Dep't of Agric.*, 661 F.3d 1209, 1253-54 (10th Cir. 2011) (refusing to require agency to consider impacts that were "only speculative in nature"); *City of Dallas*, 562 F.3d at 719-20 (agency not required to consider effects that were "highly speculative" and not "closely enough related to the federal action"); *Border Power Plant Working Grp. v. DOE*, 260 F. Supp. 2d 997, 1027-28 (S.D. Cal. 2003) (upholding decision not to evaluate effects that were nothing "more than a speculative possibility, dependent on the market for electricity and other factors"); *see also Robertson*, 490 U.S. at 356 (NEPA does not require consideration of "highly speculative harms" that "distort[] the decisionmaking process"); *Webster v. U.S. Dep't of Agric.*, 685 F.3d 411, 429 (4th Cir. 2012) (NEPA analysis sufficient where it did not consider "either speculative or relatively inconsequential flyspecks"); *City of Shoreacres v. Waterworth*, 420 F.3d 440, 451-55 (5th Cir. 2005) (agency not required to evaluate deepening of water channel as it was "too speculative to warrant consideration").

for electric generation." *Id.*; *see, e.g.*, Pet. Br. 39. But because "[s]uch impacts are not reasonably foreseeable and cannot be analyzed with any particularity," [AR95 at 194], indulging Sierra Club's speculative chain of causation would amount to onerous paperwork that would contribute nothing meaningful to DOE's decisionmaking.

At bottom, Sierra Club argues that ***some*** level of additional production is foreseeable, even if DOE cannot predict in what quantities, when, or where it might be produced. DOE, however, has never "dispute[d] the economic logic that authorizing exports of natural gas … could, all else equal, exert upward pressure on domestic natural gas prices," nor that "higher natural gas prices could lead to increased natural gas production as the national level." [AR111 at 17]. But even if additional production were foreseeable as a general matter, that does not render its environmental ***impacts*** reasonably foreseeable. "To the contrary, it would be impossible to identify with any confidence the marginal production at the wellhead or local level that would be induced by [Cheniere]'s exports over the period of its non-FTA authorization." [*Id.* at 17-18].

Sierra Club would require DOE to predict price-induced environmental impacts from this export authorization, over the next 25 years, on the entire globe. But any attempt to predict these impacts would be "highly speculative [and] indefinite." *Marsh*, 976 F.2d at 768. Doing so would require knowledge of how

the authorization in this case would affect long-term domestic and world natural gas prices. And given the interconnected nature of domestic gas markets and pipelines, upward price pressure could result in additional production, in unknown quantities, across the entire United States. Accordingly, there is "fundamental uncertainty as to where any additional production would occur and in what quantity." [AR95 at 194]. This precludes meaningful analysis of the environmental impacts of induced production because "nearly all of the environmental issues presented by unconventional natural gas production are local in nature, affecting local water resources, local air quality, and local land use patterns, all under the auspices of state and local regulatory authority." *Id.* Merely positing a potential export-induced price increase does not allow DOE to reasonably foresee where, when, or how much additional gas production might arise. *See*, *e.g.*, *Border Power Plant*, 260 F. Supp. 2d at 1027-28 (S.D. Cal. 2003) (upholding decision not to evaluate effects that were nothing "more than a speculative possibility, dependent on the market for electricity and other factors").

Moreover, overlapping regulatory schemes render the quantity and location of any increased gas production even more speculative—and the connection between these exports and such production less proximate. The NGA leaves regulation of the production of natural gas to the states. *Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591, 1596 (2015); 15 U.S.C. § 717(b). And unlike DOE, state and

federal regulators have the "authority to regulate the environmental effects of natural gas production." [AR111 at 21]. This diverse, dynamic, and unpredictable web of regulations—impacting production levels directly and indirectly—will ultimately impact where, and how much, induced gas is produced.

Sierra Club argues that "both gas production and environmental impacts can be foreseen at regional scales" because "play-level forecasts" purportedly allow for meaningful discussion of regional impacts. Pet. Br. 47-48 (capitalization altered); *see id.* at 44-54. But DOE reasonably determined that "where, as here, it is fundamentally uncertain how natural gas production at the local level will respond to price changes at the national level," such an analysis would "be more misleading than informative." [AR111 at 18-19 & n.78].

Sierra Club would have DOE use its National Energy Modeling System ("NEMS") macroeconomic model to predict such impacts. *See* Pet. Br. 46-47, 49-50, 59. But this argument is based on the mistaken premise that the mere existence of a macroeconomic model demonstrates reasonable foreseeability for NEPA purposes. In fact, any attempt to forecast induced production at the local level would be highly speculative, regardless of what model is used. As DOE explained, a "key parameter" for any model of price-induced local environmental impacts is "the price elasticity of natural gas production, estimated at a sufficiently local level so as to analyze how the production would impact specific natural resources and

human health." [AR111 at 19]. But "due to the limitations of estimating geology at the local level—as well as the uncertainties of predicting local regulation, land use patterns, and the development of supporting infrastructure—estimating the price elasticity of natural gas supply at the local level is much more speculative than doing so at the national level where local idiosyncrasies are averaged out." *Id.*

Thus, DOE noted in its export study—which used NEMS—that "projections of energy markets over a 25-year period are highly uncertain and subject to many events that cannot be foreseen," and "[t]his is particularly true in projecting the effects of exporting significant natural gas volumes." [AR23 at 3]; *see also* [AR83 at 10]. Given that this endeavor is "highly uncertain," EIA cautioned that "[t]he projections in this report,"—including those relied upon by Sierra Club here—"are not statements of what ***will*** happen but of what ***might*** happen, given the assumptions and methodologies used." [AR23 at ii]; *see also* [AR83 at 11] (2012 study's limitations "also appl[y] to the analysis contained in this updated report").

Indeed, DOE also uses NEMS for its annual "Energy Outlooks," which purport to forecast future energy markets, *see* DOE Br. 9, but those reports show that DOE does not have the crystal ball Sierra Club demands. For example, in 2005, DOE's baseline projected net ***imports*** of natural gas in 2015 was 7.02 trillion cubic feet ("Tcf"), with 4.33 Tcf imported as LNG. In 2015, however—only 10

years later—net imports amounted to only 0.9 Tcf, with almost ***no*** LNG imports.[2] This inability to foresee future worldwide energy markets also explains why the Project was initially conceived as an import terminal, but is now bi-directional. Sierra Club's simplistic assertion that "[r]easonable foreseeability … does not require certainty or guarantees," Pet. Br. 40, trivializes the task it would impose on DOE, and asks DOE to "reasonably foresee" what economists and the market cannot. *See Mayo Found. v. Surface Transp. Bd.*, 472 F.3d 545, 555-56 (8th Cir. 2006) (rejecting as "meritless" Sierra Club's argument that an agency must use NEMS to evaluate local environmental impacts of increased coal consumption). As courts have held, "broad statistical data discussing general national trends" that offer "nothing concrete" do not render putative effects reasonably foreseeable. *Coliseum Square Ass'n, Inc. v. Jackson*, 465 F.3d 215, 238 (5th Cir. 2006).

Moreover, DOE reasonably explained that even if "play-level" effects could be predicted (and they cannot), that would not provide meaningful information on environmental impacts because shale plays "overlap and stretch for thousands of square miles below diverse surface environments." [AR111 at 19]. While these large areas are useful for some economic projections, "their size [] makes them less useful units for analyzing impacts to environmental resources such as air, water, or

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[2] *Compare* EIA, *Annual Energy Outlook 2005*, at 118, 209 *with* EIA, *Annual Energy Outlook 2016*, at A27 (available at www.eia.gov/forecasts/aeo/).

land." [*Id.* at 19-20] (footnotes omitted). Therefore, using models to try to "predict where, at the play level, the additional gas production induced by Cheniere's exports will occur," as Sierra Club urges, Pet. Br. 48, "would provide no information about where any incremental production would arise ***within*** those shale plays," and so "would not render the environmental impacts of such production reasonably foreseeable in a manner that would facilitate meaningful analysis." [AR111 at 20] (emphasis added).

This is true for ozone impacts, whose "play-level" evaluation DOE reasonably concluded was not meaningfully possible. *See* [*id.* at 20 n.82]. Sierra Club argues that "play-level forecasts of gas production increases enable DOE to reasonably foresee impacts on regional ozone levels." Pet. Br. 51. But the gas "plays" that Sierra Club identifies are not coterminous with areas of high-ozone concentration. *See* [AR111 at 20 n.82] ("The [ozone] non-attainment zones appear near urban areas and bear little recognizable relationship to the subsurface geology."); [AR77 at 29] (Fig. 8) (map overlaying ozone non-attainment zones with shale basins). Thus, even if DOE knew that export-induced production would occur somewhere within a particular shale play—which it does not—it would still need to know ***where*** in that play the production would occur. Because this information is unknowable, "the play-level modeling Sierra Club urges would not

enable [DOE] to characterize the environmental and human health impacts posed by [putative export-induced] production." *Id.*

Sierra Club claims that DOE has endorsed similar studies, Pet. Br. 52-53, but the study it cites concedes the uncertainty of its estimate of increased production in the evaluated region, and that it depended on existing laws remaining constant. *See* [AR4 at 3, 6]. This uncertainty would have been magnified had DOE attempted to differentiate between emissions caused by export-induced production and those caused by increased production generally. Nor does a draft EIS prepared by a different agency show that regional analysis of ozone impacts is possible. *See* Pet. Br. 53 (citing [AR26]). That project involved "approximately 8,950 new natural gas wells" within a specified project area. [AR26 at ES-1]. Accordingly, the agency knew where and in what amounts the natural gas production would occur. That is precisely the information that DOE lacks here.

This case is thus different from *Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520 (8th Cir. 2003). There, the Surface Transportation Board declined to analyze foreseeable indirect effects of increased coal use from the construction of a rail line creating access to a coal supply. *Id.* at 532, 548-50. But the location and amount of coal being mined (and subsequently burned) was known, the agency had admitted the "likely shift" to coal the project would cause, *id.* at 549-49, and the agency had indicated that it would evaluate the

"potential air quality impacts associated with" the increased coal supply, but "failed to deliver on this promise." *Id.* at 550. For these reasons, the Eighth Circuit could conclude that it was "almost certainly true" that increased coal use and associated emissions would occur. *Id.* at 549.

Here, by contrast, neither the quantities nor locations of export-induced gas production or coal use, nor their putative environmental impacts, are known. DOE has consistently maintained that it lacks sufficient information and tools to meaningfully predict or analyze these putative effects, and has never, unlike the agency in *Mid States*, represented that it would do so. *See also Habitat Educ. Ctr. v. U.S. Forest Serv.*, 609 F.3d 897, 902 (7th Cir. 2010) (distinguishing *Mid States* because the agency there had "concluded that adverse effects from the readily foreseeable increase in coal sales were certain to occur," whereas the impacts at issue in that case were not "capable of meaningful discussion").[3]

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[3] None of the other cases on which Sierra Club relies is on point. *See* Pet. Br. 38-39, 41. Each involved review of a decision that there was no "significant impact" requiring an EIS, and the agencies either offered no explanation for failing to consider indirect effects, or the record contained specific information that allowed the agency to do so. *See Barnes v. U.S. Dep't of Transp.*, 655 F.3d 1124, 1137-39 (9th Cir. 2011) (agency offered conclusory assertions for why additional airport runway would not increase air-traffic demand even though "a new runway has a unique potential to spur demand"); *Sierra Club v. Marsh*, 769 F.2d 868, 878-79 (1st Cir. 1985) (agency should have analyzed indirect effect of "further industrial development" because, *inter alia*, "the record ma[de] it nearly impossible to doubt that building the causeway and port will lead to further development," and "plans for further development [were] precise" and contained "detailed descriptions of likely further development"); *City of Davis v. Coleman*,

Sierra Club argues that "an effect may be 'reasonably foreseeable … even if the probability of such an occurrence is low.'" Pet. Br. 42 (quoting *Blue Ridge Envtl. Def. League v. Nuclear Regulatory Comm'n*, 716 F.3d 183, 188 (D.C. Cir. 2013)). But the regulation considered in *Blue Ridge* makes clear that to be cognizable, impacts must be "supported by credible scientific evidence, … not based on pure conjecture, and … within the rule of reason." 40 C.F.R. § 1502.22(b). Here, the worldwide environmental impacts of induced gas production over the next 25 years are inherently unforeseeable, not merely the foreseeable results of a specific low-probability event. And they are outside NEPA's rule of reason, which is predicated on "the usefulness of any new potential information to the decisionmaking process." *Pub. Citizen*, 541 U.S. at 767; *cf. Marsh v. Or. Nat. Res. Council*, 490 U.S. 360 (1989) ("Application of the 'rule of reason' thus turns on the value of the new information to the still pending decisionmaking process.").[4] Even if DOE could model every conceivable

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521 F.2d 661, 673-76 (9th Cir. 1975) (finding it "obvious" that proposed interchange would cause further development).

[4] Sierra Club cites 40 C.F.R. § 1502.22 for the proposition that DOE has an obligation to provide further study and analysis because it has not shown that the costs of doing so would be "exorbitant." *See, e.g.*, Pet. Br. 12 ("Where information is essential to the agency's assessment, the agency must include it in the EIS unless 'the overall costs of obtaining it are … exorbitant.'") (quoting 40 C.F.R. § 1502.22(a)); *see also id.* at 50, 53, 69. Section 1502.22, however, does not support Sierra Club's arguments. That regulation only applies when an agency is evaluating "***reasonably foreseeable*** significant adverse effects." 40 C.F.R.

alternative possibility for the localized environmental effects of induced gas production throughout North America—and it cannot—such an indeterminate analysis would provide no useful information for its decision to authorize exports from the Project.

B. DOE Reasonably Concluded That Alleged Impacts From Coal-Switching Are Not Reasonably Foreseeable.

Sierra Club also claims that "increasing [LNG] exports will foreseeably increase U.S. coal use, with foreseeable environmental impacts." Pet. Br. 60. But as DOE reasonably concluded, the causal relationship between its "decision in this proceeding and the level of coal generation in the United States is even more attenuated than its relationship to induced natural gas production." [AR111 at 24]. In effect, Sierra Club argues that "any time a federal agency takes an action that will affect the supply or demand of a commodity, it must examine the impacts of producing or consuming that commodity, as well as the impacts of producing or consuming the ***substitute*** commodities with which it competes." *Id.* (emphasis in original). NEPA does not require such speculation.

The theoretical prospect of exports inducing higher natural gas prices, and in turn causing fuel-switching from gas to coal, provides no meaningful information as to its environmental ***impacts*** because the location and amount of such additional

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§ 1502.22(b) (emphasis added). It does not apply where, as here, DOE properly determined that effects are not reasonably foreseeable.

coal use are inherently unknowable. This lack of foreseeability is further exacerbated by regulatory uncertainty. Indeed, between the Authorization Order and the Rehearing Order, the EPA finalized rules—now under challenge in this Court—further regulating emissions from coal-based electricity generation. *See* [AR111 at 24 & nn.93 & 94]; 80 Fed. Reg. 64,662 (Oct. 23, 2015); 80 Fed. Reg. 64,510 (Oct. 23, 2015). These regulations, which this Court may or may not uphold, and the current Administration may or may not continue, could affect emissions from coal-powered electricity generation and significantly affect the price disparity between coal and natural gas. This renders even more speculative the location and degree of any export-induced coal-switching.[5]

Pointing to the EIA export studies, which predicted that exports could induce fuel-switching to coal, Sierra Club argues that DOE arbitrarily relied on the study for its public interest determination while also finding it too indeterminate for purposes of NEPA. Pet. Br. 57. This was entirely reasonable. Although DOE found the study's general macroeconomic projections "fundamentally sound" for purposes of DOE's discretionary public interest determination under NGA § 3,

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5 Sierra Club cites *Calvert Cliffs' Coordinating Comm., Inc. v. U.S. Atomic Energy Comm'n*, 449 F.2d 1109 (D.C. Cir. 1971), as holding that regulation by other agencies is not pertinent. Pet. Br. 65. But that is not what *Calvert Cliffs'* says. Rather, the Court disapproved an agency's *per se* rule that an action had no significant impact if the private party was regulated by other entities and was "equipped to observe and agrees to observe" those other regulations. 449 F.2d at 1122-23. Nothing comparable is at issue here.

[AR95 at 190], Section 3, unlike NEPA, has no reasonable foreseeability requirement. As already noted, the macroeconomic modeling used for the EIA studies, even if fundamentally sound, does not establish reasonable foreseeability. And it does not, and cannot, predict with any certainty how much, and where, coal-switching will occur over the next 25 years, in an uncertain regulatory environment, from indeterminate price effects that might be caused by this export authorization. No such study could account for possible regulatory changes much less determine ***where*** such induced coal use will occur. And in any event, with respect to potential aggregate CO_2 impacts from coal use, the 2012 EIA Study provided broad estimates of emissions and was disclosed for public review.

The circumstances of this case are thus fundamentally dissimilar from those presented in *Scientists' Institute for Public Information*, 481 F.2d at 1097, where "[t]he overall environmental effects of the program could … be extrapolated from already existing data." There, the environmental impacts were not only reasonably foreseeable, but already known to the agency. The Court also observed that "some of the environment impacts of the program are still shrouded in uncertainty." *Id.* at 1098. "But one of the functions of an impact statement is to point up uncertainties where they exist." *Id.* That is what DOE did in this case.

Sierra Club also argues that "DOE could not ignore the fact that EPA's greenhouse gas rules may not take effect." Pet. Br. 57. As it correctly observes,

however, "[i]mplementation of these rules is … uncertain." *Id*. On this point, the parties agree. But this fact only highlights the sheer speculation inherent in any attempt to forecast the environmental impacts of coal-switching in an uncertain regulatory environment. Eliding the complexity of the task, Sierra Club urges DOE to simply "consider[] multiple possible scenarios." *Id.* But this just piles speculation on speculation. Any attempt to estimate every possible substitution effect from every possible increase in gas prices and production, subject to countless hypothetical future regulatory environments, would not only be impossible but would produce no meaningful information for the decision at hand.

At bottom, Sierra Club's desired analysis would require a boundless inquiry, whereby an agency would need to predict the amounts and location, and specific environmental consequences, of any marginal increase in use of a product, as well as substitute products, that might be attributable to price effects resulting from some government action. *See* [AR111 at 24]. This highly speculative analysis would provide no meaningful information for DOE's decisionmaking. It was therefore reasonable for DOE to conclude that such speculative predictions do not render the effects cognizable under NEPA.

C. DOE's Consideration Of Potential Climate Impacts Was Reasonable.

Consideration of the global impacts posited by Sierra Club is even more speculative. In addition to all of the domestic uncertainties noted above, the

environmental impacts of greenhouse gas emissions allegedly induced by LNG exports are ultimately felt worldwide. "Greenhouse gases once emitted become well mixed in the atmosphere; emissions in New Jersey may contribute no more to flooding in New York than emissions in China." *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 422 (2011) (citation and quotation marks omitted). Even if it were possible to reasonably foresee the quantity of U.S. greenhouse gas emissions from export-induced natural gas production—and it is not—an assessment of the environmental impacts would have to take account of how the LNG is used abroad and what other fuels it would displace. As DOE reasonably concluded, this inherently speculative inquiry would provide no meaningful information for the decision at hand.

Sierra Club nevertheless criticizes DOE's consideration of global greenhouse gas emissions vis-à-vis overseas markets. *See* Pet. Br. 60-63. As an initial matter, this argument is jurisdictionally barred. *See* 15 U.S.C. § 717r(b). Before DOE, Sierra Club explicitly framed this criticism as an argument under NGA § 3, not NEPA. *See* [AR98 at 24-26]. Thus, Sierra Club did not "urge[]" this objection before DOE. *See* 15 U.S.C. § 717r(b); *Intermountain Mun. Gas Agency v. FERC*, 326 F.3d 1281, 1285 (D.C. Cir. 2003) (objection must "be specifically urged") (quotation marks and alterations omitted).

In any event, the argument is meritless. In its Section 3 analysis, DOE relied on the *Life Cycle Perspective* to conclude that "to the extent U.S. LNG exports are preferred over coal in LNG-importing nations, U.S. LNG exports are likely to reduce global GHG emissions." [AR95 at 202]. DOE noted that this analysis was helpful to its public interest determination because a large portion of electricity generation in China, India, Japan, and Europe is coal-based. [*Id.* at 202-04]. Noting DOE's characterization of natural gas as a "prevalent fuel" in these countries, Sierra Club argues that DOE should have compared possible substitution of U.S. LNG for renewable power sources. Pet. Br. 60-62 & n.16. But DOE reasonably compared coal and natural gas because coal is the most prevalent fuel for electricity generation in these countries. *See* [AR95 at 203-04 & nn.302-05]. Indeed, when Sierra Club itself analyzes fuel-switching in the United States, it likewise analyzes only coal. Pet. Br. 55-60.

Further, modeling the effect that "U.S. LNG exports would have on net global GHG emissions would require projections of how each of these fuel sources would be affected in each LNG-importing nation," as well as consideration of the "market dynamics in each of these countries over the coming decades" and "the interventions of numerous foreign governments in those markets." [AR95 at 203]. It was reasonable for DOE to conclude that the vast uncertainties inherent in such analysis would render it "too speculative" for NEPA purposes. *Id.* Not only

would DOE have to project the emissions over 25 years induced by hypothetical price effects caused by LNG exports, but it would have to balance those speculative amounts against the exponentially more speculative effects of using natural gas in numerous foreign countries, even though the destinations of the exports from the Liquefaction Project are unknown and each country has its own market, regulatory, and technological uncertainties. At bottom, anything derived from such hypothetical analyses would be little different from picking a number out of a hat, and would not meaningfully inform DOE's decisionmaking process.

Sierra Club's real objection is that environmental concerns should have led DOE to entirely deny exports to non-FTA nations. But in its § 3 determination, DOE rejected that contention as a policy matter, concluding that "the public interest is better served by addressing those environmental concerns directly—through federal, state, or local regulation, or through self-imposed industry guidelines where appropriate—rather than by prohibiting exports of natural gas." [AR95 at 196]. That is because "[u]nlike DOE, environmental regulators have the legal authority to impose requirements on natural gas production that appropriately balance benefits and burdens, and to update these regulations from time to time as technological practices and scientific understanding evolve." *Id.*

Accordingly, the highly speculative, 25-year, worldwide, multi-fuel, economic, regulatory, political, and price-impact environmental analysis that Sierra

Club would have DOE perform would ultimately provide nothing meaningful for its decision whether to authorize exports from this facility. As DOE reasonably concluded, Sierra Club's proposal "goes far beyond what the Supreme Court described must be a 'manageable line' defining the scope of review required by NEPA." [AR111 at 24] (quoting *Pub. Citizen*, 541 U.S. at 767). DOE therefore properly focused its analysis on the specific, quantifiable environmental impacts that the Project would have on its own region.

D. DOE's NEPA Analysis Was Reasonably Informed By The Environmental Addendum And Related Reports.

Sierra Club argues that the *Addendum* and other environmental reports considered by DOE "do not cure the deficiencies in the EIS." Pet. Br. 67. As a threshold matter, these reports are not necessary to sustain the EIS because they go beyond what NEPA requires. But even if NEPA required consideration of the speculative environmental effects of induced gas production, the EIS properly incorporated these materials—which were publicly available, and subject to notice and comment—by reference. *See* 40 C.F.R. § 1502.21. These exhaustive studies, considered by DOE in reaching its decision, provide as much information on these theoretical impacts as is reasonably possible. *See* DOE Br. 53-55. These reports advanced NEPA's "twin purposes" of informing the agency and the public of environmental consequences to facilitate informed debate. *Sierra Club v. U.S. Army Corps of Eng'rs*, 803 F.3d 31, 37 (D.C. Cir. 2015).

E. Cumulative-Impact Analysis Under NEPA Is Limited To The Same Geographic Area As The Project Under Review.

Sierra Club's brief repeatedly alludes to the "cumulative impacts" of LNG exports other than those from the Corpus Christi project.[6] But in considering related FERC authorizations—including for this Project—this Court has explicitly held that the cumulative-impact analysis required by NEPA is limited to "***the same geographic area*** as the project under review." *Sierra Club v. FERC*, 827 F.3d 36, 50 (D.C. Cir. 2016); *Sierra Club v. FERC*, 2016 WL 6915537, at *1.

While these decisions did not prejudge the validity of DOE's authorization, the Court's reasoning on cumulative impacts applies equally to this case. In holding that Sierra Club "dr[ew] the NEPA circle too wide for the Commission," *Sierra Club*, 827 F.3d at 50, the Court did not rely (as it did in other portions of those decisions) on any distinction between the roles of FERC and DOE. Rather, the Court relied on precedents holding that "[a] NEPA cumulative-impact analysis need only consider the 'effect of the current project along with any other past, present or likely future actions ***in the same geographic area***' as the project under review," and that NEPA looks only to impacts "upon a region." *Id*. (quoting *TOMAC, Taxpayers of Mich. Against Casinos v. Norton*, 433 F.3d 852, 864 (D.C. Cir. 2006) (emphasis supplied in *Sierra Club*), and *Kleppe v. Sierra Club*, 427 U.S.

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6 Pet. Br. 7, 11, 33, 37, 39, 41-42, 45, 47, 62, 69, 71.

390, 410 (1976)). *See also id*. (citing *Grand Canyon Tr. v. FAA*, 290 F.3d 339, 345 (D.C. Cir. 2002), for the proposition that "NEPA's 'cumulative impacts' applies to 'impacts in the same area'").

Those precedents apply equally to this case. "[A] determination of the size and location of the relevant geographic area 'requires a high level of technical expertise,' and thus 'is a task assigned to the special competency of' the agency involved." *Sierra Club*, 827 F.3d at 50 (quoting *Kleppe*, 427 U.S. at 412, 414). DOE is no better positioned than FERC to reasonably foresee the worldwide, multi-decade, cumulative impacts of induced production stemming from numerous other export projects that may or may not come to fruition. Accordingly, just like the Court held as to FERC, DOE properly limited its cumulative-impacts evaluation to the areas adjacent to the Project in San Patricio and Nueces Counties, Texas. *See* [AR81 at 4-214] (Figure 4.13-1); [*id.* at 4-220 to 4-232]; *Sierra Club*, 2016 WL 6915537, at *1. And regardless, even if NEPA did cover worldwide impacts, the requirement to consider cumulative impacts applies only to other "reasonably foreseeable future actions." 40 C.F.R. § 1508.7. Thus, for all the reasons set forth above, DOE did not err in not considering impacts from other export authorizations because those impacts were not reasonably foreseeable. *See City of Shoreacres*, 420 F.3d at 453 (The "obligation under NEPA to consider cumulative impacts is confined to impacts that are 'reasonably foreseeable.'").

II. DOE'S PUBLIC INTEREST ANALYSIS WAS NOT ARBITRARY OR CAPRICIOUS.

In attacking DOE's "public interest" determination, Sierra Club proceeds from the mistaken premise that § 3 requires DOE to make an affirmative case ***for*** export authorization that outweighs Sierra Club's contrary case. But the statute imposes a presumption that exports are in the public interest by directing that DOE "shall" authorize exports "***unless*** … it finds that the proposed exportation … will ***not*** be consistent with the public interest." 15 U.S.C. § 717b(a) (emphases added); *see Panhandle*, 822 F.2d at 1111; *W. Va. Pub. Servs. Comm'n*, 681 F.2d at 856; [AR111 at 8-10]. Thus, Sierra Club has the burden to make "an ***affirmative showing of inconsistency*** with the public interest" that rebuts the statutory presumption. *Panhandle*, 822 F.2d at 1111.

DOE correctly found that Sierra Club failed to do so, and its decision easily withstands the deferential "arbitrary and capricious" standard of review applying to § 3 decisions. *Wash. Gas Light Co. v. FERC*, 532 F.3d 928, 930 (D.C. Cir. 2008). Sierra Club argues first that DOE failed to consider the potentially unequal distribution of economic impacts from the proposed exports, which it claims is "unfair." Pet. Br. 74. But DOE considered those objections and reasonably explained that even if benefits would not be equally shared across all economic sectors, "[g]iven the finding in the LNG Export Study that exports will benefit the economy as a whole, and absent stronger record evidence on the distributional

consequences of authorizing [Cheniere]'s proposed exports, [DOE] cannot say that those exports are inconsistent with the public interest on these grounds." [AR95 at 115].

DOE identified and considered a wide range of benefits, including job creation, tax revenues, and other economic benefits. [*Id.* at 183-91]. That LNG exports would likely have a positive economic impact on the U.S. economy was affirmed by the NERA study, which forecast "net economic benefits" from issuance of export authorizations. [*Id.* at 187]; *see also* [AR24 at 1]. DOE further concluded that exports would be beneficial for non-economic reasons, including by facilitating global fuel diversification, providing "strategic benefits" through "improv[ing] energy security for many U.S. allies and trading partners," and by potentially reducing global greenhouse gas emissions through providing foreign nations with a lower-emission alternative. [AR95 at 191, 204]. DOE's obligation is to consider the "public interest" as a whole, 15 U.S.C. § 717b(a), and given the substantial record support for its finding of net overall benefits to the entire U.S. economy and national security, DOE reasonably determined that Sierra Club did not overcome the statutory presumption in favor of exports.

Nor did DOE act arbitrarily and capriciously in its § 3 analysis of environmental issues. Even though the extent of the indirect impacts alleged by Sierra Club were not reasonably foreseeable, DOE considered them qualitatively

and reasonably concluded that § 3 "is too blunt an instrument to address [Sierra Club's] environmental concerns efficiently." [AR95 at 197]. Disallowing exports, as Sierra Club urges, "would cause the United States to forego entirely the economic and international [benefits of exports], but would have little more than a modest, incremental impact on the environmental issues identified by … Sierra Club." *Id.* Given that other agencies directly regulate environmental concerns, the economic and international benefits of the proposed exports can be realized while also mitigating the environmental impacts of gas production through such direct regulation. *See* [*id.* at 196-97].[7]

Sierra Club nevertheless objects that DOE "did not 'attempt to identify or characterize the incremental environmental impacts' of exports." Pet. Br. 75 (quoting [AR95 at 193-94]). This objection is identical to Sierra Club's NEPA arguments. But since those environmental impacts "cannot be analyzed with any particularity," [*id.* at 194], it was not "inherently arbitrary," Pet. Br. 75, for DOE to decline to consider environmental impacts that cannot be measured to any meaningful degree.

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[7] Contrary to Sierra Club's suggestion, NGA § 3 does not require a formal cost-benefit analysis. *See* Pet. Br. 75. In support of its argument, Sierra Club cites *Motor Vehicles Manufacturers Ass'n of the U.S. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 52 (1983), which is not a NEPA case and does not involve NGA § 3's public interest standard.

CONCLUSION

For these reasons, and those stated by DOE, the petition for review should be denied. Alternatively, if this Court concludes that additional analysis is required, the Court should remand without vacatur given the potential disruption and ease of remedying any deficiencies. *See, e.g.*, *Black Oak Energy, LLC v. FERC*, 725 F.3d 230, 244 (D.C. Cir. 2013).

Respectfully submitted,

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February 13, 2017

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation set out in the Court's November 3, 2016, Notice of Court's Implementation of Amendments to the Federal Rules of Appellate Procedure—which states that "[t]he revised word limits for briefs prepared using a computer will apply to briefs submitted pursuant to schedules that commence after November 30, 2016"—because this brief contains 8,290 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman typeface.

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February 13, 2017

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on February 13, 2017. Service upon participants in the case who are registered CM/ECF users will be accomplished by the appellate CM/ECF system.

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February 13, 2017

Addendum

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(Except for the following, applicable statutes, etc. are contained in the Brief for Respondent United States Department of Energy or the Statutory Addendum for Petitioner Sierra Club.)

Sec.

§ 717. Regulation of natural gas companies

(a) Necessity of regulation in public interest

As disclosed in reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) Transactions to which provisions of chapter applicable

The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, and to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

(c) Intrastate transactions exempt from provisions of chapter; certification from State commission as conclusive evidence

The provisions of this chapter shall not apply to any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission. The matters exempted from the provisions of this chapter by this subsection are declared to be matters primarily of local concern and subject to regulation by the several States. A certification from such State commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction.

(d) Vehicular natural gas jurisdiction

The provisions of this chapter shall not apply to any person solely by reason of, or with respect to, any sale or transportation of vehicular natural gas if such person is—

(1) not otherwise a natural-gas company; or

(2) subject primarily to regulation by a State commission, whether or not such State commission has, or is exercising, jurisdiction over the sale, sale for resale, or transportation of vehicular natural gas.

(June 21, 1938, ch. 556, §1, 52 Stat. 821; Mar. 27, 1954, ch. 115, 68 Stat. 36; Pub. L. 102–486, title IV, §404(a)(1), Oct. 24, 1992, 106 Stat. 2879; Pub. L. 109–58, title III, §311(a), Aug. 8, 2005, 119 Stat. 685.)

AMENDMENTS

2005—Subsec. (b). Pub. L. 109–58 inserted ''and to the importation or exportation of natural gas in foreign commerce and to persons engaged in such importation or exportation,'' after ''such transportation or sale,''.

1992—Subsec. (d). Pub. L. 102–486 added subsec. (d).

1954—Subsec. (c). Act Mar. 27, 1954, added subsec. (c).

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), 7291, and 7293 of Title 42, The Public Health and Welfare.

STATE LAWS AND REGULATIONS

Pub. L. 102–486, title IV, §404(b), Oct. 24, 1992, 106 Stat. 2879, provided that: ''The transportation or sale of natural gas by any person who is not otherwise a public utility, within the meaning of State law—

''(1) in closed containers; or

''(2) otherwise to any person for use by such person as a fuel in a self-propelled vehicle,

shall not be considered to be a transportation or sale of natural gas within the meaning of any State law, regulation, or order in effect before January 1, 1989. This subsection shall not apply to any provision of any State law, regulation, or order to the extent that such provision has as its primary purpose the protection of public safety.''

EMERGENCY NATURAL GAS ACT OF 1977

Pub. L. 95–2, Feb. 2, 1977, 91 Stat. 4, authorized President to declare a natural gas emergency and to require

emergency deliveries and transportation of natural gas until the earlier of Apr. 30, 1977, or termination of emergency by President and provided for antitrust protection, emergency purchases, adjustment in charges for local distribution companies, relationship to Natural Gas Act, effect of certain contractual obligations, administrative procedure and judicial review, enforcement, reporting to Congress, delegation of authorities, and preemption of inconsistent State or local action.

EXECUTIVE ORDER NO. 11969

Ex. Ord. No. 11969, Feb. 2, 1977, 42 F.R. 6791, as amended by Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, which delegated to the Secretary of Energy the authority vested in the President by the Emergency Natural Gas Act of 1977 except the authority to declare and terminate a natural gas emergency, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

PROCLAMATION NO. 4485

Proc. No. 4485, Feb. 2, 1977, 42 F.R. 6789, declared that a natural gas emergency existed within the meaning of section 3 of the Emergency Natural Gas Act of 1977, set out as a note above, which emergency was terminated by Proc. No. 4495, Apr. 1, 1977, 42 F.R. 18053, formerly set out below.

PROCLAMATION NO. 4495

Proc. No. 4495, Apr. 1, 1977, 42 F.R. 18053, terminated the natural gas emergency declared to exist by Proc. No. 4485, Feb. 2, 1977, 42 F.R. 6789, formerly set out above.

§ 717a. Definitions

When used in this chapter, unless the context otherwise requires—

(1) ''Person'' includes an individual or a corporation.

(2) ''Corporation'' includes any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, receiver or receivers, trustee or trustees of any of the foregoing, but shall not include municipalities as hereinafter defined.

(3) ''Municipality'' means a city, county, or other political subdivision or agency of a State.

(4) ''State'' means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States.

(5) ''Natural gas'' means either natural gas unmixed, or any mixture of natural and artificial gas.

(6) ''Natural-gas company'' means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.

(7) ''Interstate commerce'' means commerce between any point in a State and any point 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), the importation of the natural gas referred to in subsection (b), or the exportation of natural gas to a nation

the Senior Intelligence Service, the Senior National Intelligence Service, or any other Service that the Secretary, in coordination with the Director of National Intelligence, considers appropriate'' for ''which shall be a position in the Senior Executive Service''.

EFFECTIVE DATE

Section effective Oct. 5, 1999, see section 3299 of Pub. L. 106–65, set out as a note under section 2401 of Title 50, War and National Defense.

§ 7144d. Office of Arctic Energy

(a) Establishment

The Secretary of Energy may establish within the Department of Energy an Office of Arctic Energy.

(b) Purposes

The purposes of such office shall be as follows:

(1) To promote research, development, and deployment of electric power technology that is cost-effective and especially well suited to meet the needs of rural and remote regions of the United States, especially where permafrost is present or located nearby.

(2) To promote research, development, and deployment in such regions of—

(A) enhanced oil recovery technology, including heavy oil recovery, reinjection of carbon, and extended reach drilling technologies;

(B) gas-to-liquids technology and liquified natural gas (including associated transportation systems);

(C) small hydroelectric facilities, river turbines, and tidal power;

(D) natural gas hydrates, coal bed methane, and shallow bed natural gas; and

(E) alternative energy, including wind, geothermal, and fuel cells.

(c) Location

The Secretary shall locate such office at a university with expertise and experience in the matters specified in subsection (b) of this section.

(Pub. L. 106–398, § 1 [div. C, title XXXI, § 3197], Oct. 30, 2000, 114 Stat. 1654, 1654A–482.)

CODIFICATION

Section was enacted as part of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7144e. Office of Indian Energy Policy and Programs

(a) Establishment

There is established within the Department an Office of Indian Energy Policy and Programs (referred to in this section as the ''Office''). The Office shall be headed by a Director, who shall be appointed by the Secretary and compensated at a rate equal to that of level IV of the Executive Schedule under section 5315 of title 5.

(b) Duties of Director

The Director, in accordance with Federal policies promoting Indian self-determination and the purposes of this chapter, shall provide, direct, foster, coordinate, and implement energy planning, education, management, conservation, and delivery programs of the Department that—

(1) promote Indian tribal energy development, efficiency, and use;

(2) reduce or stabilize energy costs;

(3) enhance and strengthen Indian tribal energy and economic infrastructure relating to natural resource development and electrification; and

(4) bring electrical power and service to Indian land and the homes of tribal members located on Indian lands or acquired, constructed, or improved (in whole or in part) with Federal funds.

(Pub. L. 95–91, title II, § 217, as added Pub. L. 109–58, title V, § 502(a), Aug. 8, 2005, 119 Stat. 763.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), 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.

SUBCHAPTER III—TRANSFERS OF FUNCTIONS

§ 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 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. 3161]; 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) [Former] Executive Order No. 11652, as amended, 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) [Former] Executive Order No. 11905, as amended, 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 former 50 U.S.C. App. 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 U.S.C. App. 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.

§ 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 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.];

(D) the power marketing functions of the Bureau of Reclamation, including the construction, operation, and maintenance of transmission lines and attendant facilities; and

(E) the transmission and disposition of the electric power and energy generated at Falcon Dam and Amistad Dam, international storage reservoir projects on the Rio Grande, pursuant to the Act of June 18, 1954, as amended by the Act of December 23, 1963.

(2) The Southeastern Power Administration, the Southwestern Power Administration, and the Bonneville Power Administration,[1] shall be preserved as separate and distinct organizational entities within the Department. Each such entity shall be headed by an Administrator appointed by the Secretary. The functions transferred to the Secretary in paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) shall be exercised by the Secretary, acting by and through such Administrators. Each such Administrator shall maintain his principal office at a place located in the region served by his respective Federal power marketing entity.

(3) The functions transferred in paragraphs (1)(E) and (1)(F)[2] of this subsection shall be exercised by the Secretary, acting by and through a separate and distinct Administration within the Department which shall be headed by an Administrator appointed by the Secretary. The Administrator shall establish and shall maintain such regional offices as necessary to facilitate the performance of such functions. Neither the transfer of functions effected by paragraph (1)(E) of this subsection nor any changes in cost allocation or project evaluation standards shall be deemed to authorize the reallocation of joint costs of multipurpose facilities theretofore allo-

[1] So in original. The comma probably should not appear.

[2] See References in Text note below.

nection with any function carried out by the Commission pursuant to this chapter or as otherwise authorized by law.

(j) Annual authorization and appropriation request

In each annual authorization and appropriation request under this chapter, the Secretary shall identify the portion thereof intended for the support of the Commission and include a statement by the Commission (1) showing the amount requested by the Commission in its budgetary presentation to the Secretary and the Office of Management and Budget and (2) an assessment of the budgetary needs of the Commission. Whenever the Commission submits to the Secretary, the President, or the Office of Management and Budget, any legislative recommendation or testimony, or comments on legislation, prepared for submission to Congress, the Commission shall concurrently transmit a copy thereof to the appropriate committees of Congress.

(Pub. L. 95–91, title IV, § 401, Aug. 4, 1977, 91 Stat. 582; Pub. L. 101–271, § 2(a), (b), Apr. 11, 1990, 104 Stat. 135.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (i) and (j), 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.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–271 designated existing provisions as par. (1), substituted ''5 years'' for ''four years'', struck out after third sentence ''The terms of the members first taking office shall expire (as designated by the President at the time of appointment), two at the end of two years, two at the end of three years, and one at the end of four years.'', substituted ''A Commissioner may continue to serve after the expiration of his term until his successor is appointed and has been confirmed and taken the oath of Office, except that such Commissioner shall not serve beyond the end of the session of the Congress in which such term expires.'' for ''A Commissioner may continue to serve after the expiration of his term until his successor has taken office, except that he may not so continue to serve for more than one year after the date on which his term would otherwise expire under this subsection.'', and added par. (2).

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–271, § 2(c), Apr. 11, 1990, 104 Stat. 136, provided that: ''The amendments made by this section [amending this section] apply only to persons appointed or reappointed as members of the Federal Energy Regulatory Commission after the date of enactment of this Act [Apr. 11, 1990].''

RENEWABLE ENERGY AND ENERGY CONSERVATION INCENTIVES

Pub. L. 101–549, title VIII, § 808, Nov. 15, 1990, 104 Stat. 2690, provided that:

''(a) DEFINITION.—For purposes of this section, 'renewable energy' means energy from photovoltaic, solar thermal, wind, geothermal, and biomass energy production technologies.

''(b) RATE INCENTIVES STUDY.—Within 18 months after enactment [Nov. 15, 1990], the Federal Energy Regulatory Commission, in consultation with the Environmental Protection Agency, shall complete a study which calculates the net environmental benefits of renewable energy, compared to nonrenewable energy, and assigns numerical values to them. The study shall include, but not be limited to, environmental impacts on air, water, land use, water use, human health, and waste disposal.

''(c) MODEL REGULATIONS.—In conjunction with the study in subsection (b), the Commission shall propose one or more models for incorporating the net environmental benefits into the regulatory treatment of renewable energy in order to provide economic compensation for those benefits.

''(d) REPORT.—The Commission shall transmit the study and the model regulations to Congress, along with any recommendations on the best ways to reward renewable energy technologies for their environmental benefits, in a report no later than 24 months after enactment [Nov. 15, 1990].''

RETENTION AND USE OF REVENUES FROM LICENSING FEES, INSPECTION SERVICES, AND OTHER SERVICES AND COLLECTIONS; REDUCTION TO ACHIEVE FINAL FISCAL YEAR APPROPRIATION

Pub. L. 99–500, § 101(e) [title III], Oct. 18, 1986, 100 Stat. 1783–194, 1783–208, and Pub. L. 99–591, § 101(e) [title III], Oct. 30, 1986, 100 Stat. 3341–194, 3341–208, provided in part: ''That hereafter and notwithstanding any other provision of law revenues from licensing fees, inspection services, and other services and collections, estimated at $78,754,000 in fiscal year 1987, may be retained and used for necessary expenses in this account, and may remain available until expended: *Provided further*, That the sum herein appropriated shall be reduced as revenues are received during fiscal year 1987, so as to result in a final fiscal year 1987 appropriation estimated at not more than $20,325,000.''

Similar provisions were contained in the following appropriation acts:

Pub. L. 114–113, div. D, title III, Dec. 18, 2015, 129 Stat. 2415.
Pub. L. 113–235, div. D, title III, Dec. 16, 2014, 128 Stat. 2322.
Pub. L. 113–76, div. D, title III, Jan. 17, 2014, 128 Stat. 172.
Pub. L. 112–74, div. B, title III, Dec. 23, 2011, 125 Stat. 875.
Pub. L. 111–85, title III, Oct. 28, 2009, 123 Stat. 2871.
Pub. L. 111–8, div. C, title III, Mar. 11, 2009, 123 Stat. 625.
Pub. L. 110–161, div. C, title III, Dec. 26, 2007, 121 Stat. 1966.
Pub. L. 109–103, title III, Nov. 19, 2005, 119 Stat. 2277.
Pub. L. 108–447, div. C, title III, Dec. 8, 2004, 118 Stat. 2957.
Pub. L. 108–137, title III, Dec. 1, 2003, 117 Stat. 1859.
Pub. L. 108–7, div. D, title III, Feb. 20, 2003, 117 Stat. 153.
Pub. L. 107–66, title III, Nov. 12, 2001, 115 Stat. 508.
Pub. L. 106–377, § 1(a)(2) [title III], Oct. 27, 2000, 114 Stat. 1441, 1441A–78.
Pub. L. 106–60, title III, Sept. 29, 1999, 113 Stat. 494.
Pub. L. 105–245, title III, Oct. 7, 1998, 112 Stat. 1851.
Pub. L. 105–62, title III, Oct. 13, 1997, 111 Stat. 1334.
Pub. L. 104–206, title III, Sept. 30, 1996, 110 Stat. 2998.
Pub. L. 104–46, title III, Nov. 13, 1995, 109 Stat. 416.
Pub. L. 103–316, title III, Aug. 26, 1994, 108 Stat. 1719.
Pub. L. 103–126, title III, Oct. 28, 1993, 107 Stat. 1330.
Pub. L. 102–377, title III, Oct. 2, 1992, 106 Stat. 1338.
Pub. L. 102–104, title III, Aug. 17, 1991, 105 Stat. 531.
Pub. L. 101–514, title III, Nov. 5, 1990, 104 Stat. 2093.
Pub. L. 101–101, title III, Sept. 29, 1989, 103 Stat. 661.
Pub. L. 100–371, title III, July 19, 1988, 102 Stat. 870.
Pub. L. 100–202, § 101(d) [title III], Dec. 22, 1987, 101 Stat. 1329–104, 1329–124.

§ 7172. Jurisdiction of Commission

(a) Transfer of functions from Federal Power Commission

(1) There are transferred to, and vested in, the Commission the following functions of the Fed-

eral Power Commission or of any member of the Commission or any officer or component of the Commission:

(A) the investigation, issuance, transfer, renewal, revocation, and enforcement of licenses and permits for the construction, operation, and maintenance of dams, water conduits, reservoirs, powerhouses, transmission lines, or other works for the development and improvement of navigation and for the development and utilization of power across, along, from, or in navigable waters under part I of the Federal Power Act [16 U.S.C. 791a et seq.];

(B) the establishment, review, and enforcement of rates and charges for the transmission or sale of electric energy, including determinations on construction work in progress, under part II of the Federal Power Act [16 U.S.C. 824 et seq.], and the interconnection, under section 202(b), of such Act [16 U.S.C. 824a(b)], of facilities for the generation, transmission, and sale of electric energy (other than emergency interconnection);

(C) the establishment, review, and enforcement of rates and charges for the transportation and sale of natural gas by a producer or gatherer or by a natural gas pipeline or natural gas company under sections 1, 4, 5, and 6 of the Natural Gas Act [15 U.S.C. 717, 717c to 717e];

(D) the issuance of a certificate of public convenience and necessity, including abandonment of facilities or services, and the establishment of physical connections under section 7 of the Natural Gas Act [15 U.S.C. 717f];

(E) the establishment, review, and enforcement of curtailments, other than the establishment and review of priorities for such curtailments, under the Natural Gas Act [15 U.S.C. 717 et seq.]; and

(F) the regulation of mergers and securities acquisition under the Federal Power Act [16 U.S.C. 791a et seq.] and Natural Gas Act [15 U.S.C. 717 et seq.].

(2) The Commission may exercise any power under the following sections to the extent the Commission determines such power to be necessary to the exercise of any function within the jurisdiction of the Commission:

(A) sections 4, 301, 302, 306 through 309, and 312 through 316 of the Federal Power Act [16 U.S.C. 797, 825, 825a, 825e to 825h, 825k to 825*o*]; and

(B) sections 8, 9, 13 through 17, 20, and 21 of the Natural Gas Act [15 U.S.C. 717*g*, 717h, 717*l* to 717p, 717s, 717t].

(b) Repealed. Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379

(c) Consideration of proposals made by Secretary to amend regulations issued under section 753 of title 15; exception

(1) Pursuant to the procedures specified in section 7174 of this title and except as provided in paragraph (2), the Commission shall have jurisdiction to consider any proposal by the Secretary to amend the regulation required to be issued under section 753(a)[1] of title 15 which is required by section 757 or 760a[1] of title 15 to be transmitted by the President to, and reviewed by, each House of Congress, under section 6421 of this title.

(2) In the event that the President determines that an emergency situation of overriding national importance exists and requires the expeditious promulgation of a rule described in paragraph (1), the President may direct the Secretary to assume sole jurisdiction over the promulgation of such rule, and such rule shall be transmitted by the President to, and reviewed by, each House of Congress under section 757 or 760a[1] of title 15, and section 6421 of this title.

(d) Matters involving agency determinations to be made on record after agency hearing

The Commission shall have jurisdiction to hear and determine any other matter arising under any other function of the Secretary—

(1) involving any agency determination required by law to be made on the record after an opportunity for an agency hearing; or

(2) involving any other agency determination which the Secretary determines shall be made on the record after an opportunity for an agency hearing,

except that nothing in this subsection shall require that functions under sections 6213 and 6214[1] of this title shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(e) Matters assigned by Secretary after public notice and matters referred under section 7174 of this title

In addition to the other provisions of this section, the Commission shall have jurisdiction over any other matter which the Secretary may assign to the Commission after public notice, or which are required to be referred to the Commission pursuant to section 7174 of this title.

(f) Limitation

No function described in this section which regulates the exports or imports of natural gas or electricity shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(g) Final agency action

The decision of the Commission involving any function within its jurisdiction, other than action by it on a matter referred to it pursuant to section 7174 of this title, shall be final agency action within the meaning of section 704 of title 5 and shall not be subject to further review by the Secretary or any officer or employee of the Department.

(h) Rules, regulations, and statements of policy

The Commission is authorized to prescribe rules, regulations, and statements of policy of general applicability with respect to any function under the jurisdiction of the Commission pursuant to this section.

(Pub. L. 95–91, title IV, § 402, Aug. 4, 1977, 91 Stat. 583; Pub. L. 103–272, § 7(b), July 5, 1994, 108 Stat. 1379.)

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (a)(1)(A), (B), and (F), is act June 10, 1920, ch. 285, 41

[1] See References in Text note below.

Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. Parts I and II of the Federal Power Act are classified generally to subchapters I (§ 791a et seq.) and II (§ 824 et seq.), respectively, of chapter 12 of Title 16. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The Natural Gas Act, referred to in subsec. (a)(1)(E), (F), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

Sections 753, 757, and 760a of title 15, referred to in subsec. (c), were omitted from the Code pursuant to section 760g of Title 15, which provided for the expiration of the President's authority under those sections on Sept. 30, 1981.

Section 6214 of this title, referred to in subsec. (d), was repealed by Pub. L. 106–469, title I, § 103(3), Nov. 9, 2000, 114 Stat. 2029.

AMENDMENTS

1994—Subsec. (b). Pub. L. 103–272 struck out subsec. (b) which read as follows: ''There are transferred to, and vested in, the Commission all functions and authority of the Interstate Commerce Commission or any officer or component of such Commission where the regulatory function establishes rates or charges for the transportation of oil by pipeline or establishes the valuation of any such pipeline.'' See section 60502 of Title 49, Transportation.

OIL PIPELINE REGULATORY REFORM

Pub. L. 102–486, title XVIII, Oct. 24, 1992, 106 Stat. 3010, provided that:

''SEC. 1801. OIL PIPELINE RATEMAKING METHODOLOGY.

''(a) ESTABLISHMENT.—Not later than 1 year after the date of the enactment of this Act [Oct. 24, 1992], the Federal Energy Regulatory Commission shall issue a final rule which establishes a simplified and generally applicable ratemaking methodology for oil pipelines in accordance with section 1(5) of part I of the Interstate Commerce Act [former 49 U.S.C. 1(5)].

''(b) EFFECTIVE DATE.—The final rule to be issued under subsection (a) may not take effect before the 365th day following the date of the issuance of the rule.

''SEC. 1802. STREAMLINING OF COMMISSION PROCEDURES.

''(a) RULEMAKING.—Not later than 18 months after the date of the enactment of this Act [Oct. 24, 1992], the Commission shall issue a final rule to streamline procedures of the Commission relating to oil pipeline rates in order to avoid unnecessary regulatory costs and delays.

''(b) SCOPE OF RULEMAKING.—Issues to be considered in the rulemaking proceeding to be conducted under subsection (a) shall include the following:

''(1) Identification of information to be filed with an oil pipeline tariff and the availability to the public of any analysis of such tariff filing performed by the Commission or its staff.

''(2) Qualification for standing (including definitions of economic interest) of parties who protest oil pipeline tariff filings or file complaints thereto.

''(3) The level of specificity required for a protest or complaint and guidelines for Commission action on the portion of the tariff or rate filing subject to protest or complaint.

''(4) An opportunity for the oil pipeline to file a response for the record to an initial protest or complaint.

''(5) Identification of specific circumstances under which Commission staff may initiate a protest.

''(c) ADDITIONAL PROCEDURAL CHANGES.—In conducting the rulemaking proceeding to carry out subsection (a), the Commission shall identify and transmit to Congress any other procedural changes relating to oil pipeline rates which the Commission determines are necessary to avoid unnecessary regulatory costs and delays and for which additional legislative authority may be necessary.

''(d) WITHDRAWAL OF TARIFFS AND COMPLAINTS.—

''(1) WITHDRAWAL OF TARIFFS.—If an oil pipeline tariff which is filed under part I of the Interstate Commerce Act [former 49 U.S.C. 1 et seq.] and which is subject to investigation is withdrawn—

''(A) any proceeding with respect to such tariff shall be terminated;

''(B) the previous tariff rate shall be reinstated; and

''(C) any amounts collected under the withdrawn tariff rate which are in excess of the previous tariff rate shall be refunded.

''(2) WITHDRAWAL OF COMPLAINTS.—If a complaint which is filed under section 13 of the Interstate Commerce Act [former 49 U.S.C. 13] with respect to an oil pipeline tariff is withdrawn, any proceeding with respect to such complaint shall be terminated.

''(e) ALTERNATIVE DISPUTE RESOLUTION.—To the maximum extent practicable, the Commission shall establish appropriate alternative dispute resolution procedures, including required negotiations and voluntary arbitration, early in an oil pipeline rate proceeding as a method preferable to adjudication in resolving disputes relating to the rate. Any proposed rates derived from implementation of such procedures shall be considered by the Commission on an expedited basis for approval.

''SEC. 1803. PROTECTION OF CERTAIN EXISTING RATES.

''(a) RATES DEEMED JUST AND REASONABLE.—Except as provided in subsection (b)—

''(1) any rate in effect for the 365-day period ending on the date of the enactment of this Act [Oct. 24, 1992] shall be deemed to be just and reasonable (within the meaning of section 1(5) of the Interstate Commerce Act [former 49 U.S.C. 1(5)]); and

''(2) any rate in effect on the 365th day preceding the date of such enactment shall be deemed to be just and reasonable (within the meaning of such section 1(5)) regardless of whether or not, with respect to such rate, a new rate has been filed with the Commission during such 365-day period;

if the rate in effect, as described in paragraph (1) or (2), has not been subject to protest, investigation, or complaint during such 365-day period.

''(b) CHANGED CIRCUMSTANCES.—No person may file a complaint under section 13 of the Interstate Commerce Act [former 49 U.S.C. 13] against a rate deemed to be just and reasonable under subsection (a) unless—

''(1) evidence is presented to the Commission which establishes that a substantial change has occurred after the date of the enactment of this Act [Oct. 24, 1992]—

''(A) in the economic circumstances of the oil pipeline which were a basis for the rate; or

''(B) in the nature of the services provided which were a basis for the rate; or

''(2) the person filing the complaint was under a contractual prohibition against the filing of a complaint which was in effect on the date of enactment of this Act and had been in effect prior to January 1, 1991, provided that a complaint by a party bound by such prohibition is brought within 30 days after the expiration of such prohibition.

If the Commission determines pursuant to a proceeding instituted as a result of a complaint under section 13 of the Interstate Commerce Act that the rate is not just and reasonable, the rate shall not be deemed to be just and reasonable. Any tariff reduction or refunds that may result as an outcome of such a complaint shall be prospective from the date of the filing of the complaint.

''(c) LIMITATION REGARDING UNDULY DISCRIMINATORY OR PREFERENTIAL TARIFFS.—Nothing in this section

shall prohibit any aggrieved person from filing a complaint under section 13 or section 15(1) of the Interstate Commerce Act [former 49 U.S.C. 13, 15(1)] challenging any tariff provision as unduly discriminatory or unduly preferential.

''SEC. 1804. DEFINITIONS.

''For the purposes of this title, the following definitions apply:

''(1) COMMISSION.—The term 'Commission' means the Federal Energy Regulatory Commission and, unless the context requires otherwise, includes the Oil Pipeline Board and any other office or component of the Commission to which the functions and authority vested in the Commission under section 402(b) of the Department of Energy Organization Act (42 U.S.C. 7172(b)) are delegated.

''(2) OIL PIPELINE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'oil pipeline' means any common carrier (within the meaning of the Interstate Commerce Act [former 49 U.S.C. 1 et seq.]) which transports oil by pipeline subject to the functions and authority vested in the Commission under section 402(b) of the Department of Energy Organization Act (42 U.S.C. 7172(b)).

''(B) EXCEPTION.—The term 'oil pipeline' does not include the Trans-Alaska Pipeline authorized by the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) or any pipeline delivering oil directly or indirectly to the Trans-Alaska Pipeline.

''(3) OIL.—The term 'oil' has the same meaning as is given such term for purposes of the transfer of functions from the Interstate Commerce Commission to the Federal Energy Regulatory Commission under section 402(b) of the Department of Energy Organization Act (42 U.S.C. 7172(b)).

''(4) RATE.—The term 'rate' means all charges that an oil pipeline requires shippers to pay for transportation services.''

§ 7173. Initiation of rulemaking procedures before Commission

(a) Proposal of rules, regulations, and statements of policy of general applicability by Secretary and Commission

The Secretary and the Commission are authorized to propose rules, regulations, and statements of policy of general applicability with respect to any function within the jurisdiction of the Commission under section 7172 of this title.

(b) Consideration and final action on proposals of Secretary

The Commission shall have exclusive jurisdiction with respect to any proposal made under subsection (a) of this section, and shall consider and take final action on any proposal made by the Secretary under such subsection in an expeditious manner in accordance with such reasonable time limits as may be set by the Secretary for the completion of action by the Commission on any such proposal.

(c) Utilization of rulemaking procedures for establishment of rates and charges under Federal Power Act and Natural Gas Act

Any function described in section 7172 of this title which relates to the establishment of rates and charges under the Federal Power Act [16 U.S.C. 791a et seq.] or the Natural Gas Act [15 U.S.C. 717 et seq.], may be conducted by rulemaking procedures. Except as provided in subsection (d) of this section, the procedures in such a rulemaking proceeding shall assure full consideration of the issues and an opportunity for interested persons to present their views.

(d) Submission of written questions by interested persons

With respect to any rule or regulation promulgated by the Commission to establish rates and charges for the first sale of natural gas by a producer or gatherer to a natural gas pipeline under the Natural Gas Act [15 U.S.C. 717 et seq.], the Commission may afford any interested person a reasonable opportunity to submit written questions with respect to disputed issues of fact to other interested persons participating in the rulemaking proceedings. The Commission may establish a reasonable time for both the submission of questions and responses thereto.

(Pub. L. 95–91, title IV, § 403, Aug. 4, 1977, 91 Stat. 585.)

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (c), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The Natural Gas Act, referred to in subsecs. (c) and (d), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

§ 7174. Referral of other rulemaking proceedings to Commission

(a) Notification of Commission of proposed action; public comment

Except as provided in section 7173 of this title, whenever the Secretary proposes to prescribe rules, regulations, and statements of policy of general applicability in the exercise of any function which is transferred to the Secretary under section 7151 of this title or section 60501 of title 49, he shall notify the Commission of the proposed action. If the Commission, in its discretion, determines within such period as the Secretary may prescribe, that the proposed action may significantly affect any function within the jurisdiction of the Commission pursuant to section 7172(a)(1) and (c)(1) of this title and section 60502 of title 49, the Secretary shall immediately refer the matter to the Commission, which shall provide an opportunity for public comment.

(b) Recommendations of Commission; publication

Following such opportunity for public comment the Commission, after consultation with the Secretary, shall either—

(1) concur in adoption of the rule or statement as proposed by the Secretary;

(2) concur in adoption of the rule or statement only with such changes as it may recommend; or

(3) recommend that the rule or statement not be adopted.

The Commission shall promptly publish its recommendations, adopted under this subsection, along with an explanation of the reason for its actions and an analysis of the major comments, criticisms, and alternatives offered during the comment period.

§ 1502.25 Environmental review and consultation requirements.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), and other environmental review laws and executive orders.

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate.

PART 1503—COMMENTING

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 55997, Nov. 29, 1978, unless otherwise noted.

§ 1503.1 Inviting comments.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and

(iii) Any agency which has requested that it receive statements on actions of the kind proposed.

Office of Management and Budget Circular A–95 (Revised), through its system of clearinghouses, provides a means of securing the views of State and local environmental agencies. The clearinghouses may be used, by mutual agreement of the lead agency and the clearinghouse, for securing State and local reviews of the draft environmental impact statements.

(3) Request comments from the applicant, if any.

(4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(b) An agency may request comments on a final environmental impact statement before the decision is finally made. In any case other agencies or persons may make comments before the final decision unless a different time is provided under § 1506.10.

§ 1503.2 Duty to comment.

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in § 1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment.

§ 1503.3 Specificity of comments.

(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

§ 1503.4 Response to comments.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (§ 1502.19). The entire document with a new cover sheet shall be filed as the final statement (§ 1506.9).

PART 1504—PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

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).

§ 1504.1 Purpose.

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is ''unsatisfactory from the standpoint of public health or welfare or environmental quality,'' section 309 directs that the matter be referred to the Council (hereafter ''environmental referrals'').

(c) Under section 102(2)(C) of the Act other Federal agencies may make similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews

DEPARTMENT OF ENERGY
DELEGATION ORDER NO. 00-004.00A
TO THE FEDERAL ENERGY REGULATORY COMMISSION

1. DELEGATION. Under the authority vested in me as Secretary of Energy ("Secretary") and pursuant to sections 642 and 402(e) of the Department of Energy Organization Act (Public Law 95-91, 42 U.S.C. 7252) (the "DOE Act"), I delegate to the Federal Energy Regulatory Commission ("Commission") authority to take the following actions:

1.1 On a nonexclusive basis to the Chairman,

A. Administer and manage the Commission's personnel (including members of the Senior Executive Service) as is not otherwise granted the Chairman by statute. This authority delegated to the Chairman for administration and management of the Commission's personnel shall include, but not be limited to:

1. selection and appointment of personnel;
2. performance appraisals and performance appraisal systems;
3. compensation, promotions, awards, and bonuses;
4. reorganizations, transfers of functions, reductions in force, and the standards governing such reductions;
5. removals and disciplinary actions; and
6. training, travel, and transportation.

B. Enter into, modify, administer, terminate, close-out, and take such other action as may be necessary and appropriate with respect to any procurement contract, interagency agreement, financial assistance agreement, financial incentive agreement, sales contract, or other similar action binding the Department of Energy to the obligation and expenditure of public funds or the sale of products and services that are related to the mission of the Commission. Such action shall include the rendering of approvals, determinations, and decisions, except those required by law or regulation to be made by other authority.

C. Serve as the Head of the Procuring Activity (HPA) for the Federal Energy Regulatory Commission.

D. Appoint Contracting Officers for the Commission.

E. Acquire, manage, and dispose of personal property held by the Commission for official use by its employees or contractors.

F. Approve acquisitions of automatic data processing and telecommunications equipment and services.

1.2 Carry out Part I of the Federal Power Act (Public Law 280, 66th Cong., 2d Sess., as amended), to the extent that such authority is not transferred to, and vested in, the Commission by section 402(a)(1)(A) of the DOE Act, provided that this paragraph delegates (A) section 4 of the Federal Power Act to the extent the Commission determines the exercise of such authority is necessary for it to exercise any function transferred to, and vested in, the Commission by this delegation, and (B) section 24 of the Federal Power Act (relating to the granting of entry, location, or other disposition of lands of the United States reserved or classified as power sites).

1.3 Carry out such functions as are necessary to implement and enforce the Secretary's policy requiring holders of Presidential permits authorizing the construction, operation, maintenance, or connection of facilities for the transmission of electric energy between the United States and foreign countries to provide non-discriminatory open access transmission services. In exercising this authority the Commission is specifically authorized to utilize the authority of the Secretary under Executive Order No. 10485, dated September 3, 1953, as amended by Executive Order No. 12038, dated February 3, 1978, and section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)) and such other sections of the FPA vested in the Secretary as may be relevant, to regulate access to, and the rates, terms, and conditions for, transmission services over permitted international electric transmission facilities to the extent the Commission finds it necessary and appropriate to the public interest. This authority is delegated to the Commission for the sole purpose of authorizing the Commission to take actions necessary to implement and enforce non-discriminatory open access transmission service over the United States portion of those international electric transmission lines required by the Secretary to provide such service. Nothing in this delegation shall allow the Commission to revoke, amend, or otherwise modify Presidential permits or electricity export authorizations issued by the Secretary.

1.4 Implement section 202(a) of the Federal Power Act (relating to dividing the country into regional districts).

1.5 Implement section 203 of the Federal Power Act (relating to the disposition, merger or consolidation of facilities and the acquisition of securities);

1.6 Implement section 204 of the Federal Power Act (relating to the issuance of securities and the assumption of liabilities);

1.7 Implement section 206(b) of the Federal Power Act (relating to the investigation and determination of the cost of production or transmission of electric energy), as the Commission determines appropriate to perform its functions;

1.8 Implement section 207 of the Federal Power Act (relating to adequate and sufficient interstate service);

1.9 Implement section 209 of the Federal Power Act (relating to use of boards composed of State representatives and cooperation with State commissions);

1.10 Implement section 304 of the Federal Power Act (relating to annual and periodic or special reports), as the Commission determines appropriate to perform its functions;

1.11 Implement section 305 of the Federal Power Act (relating to officers or directors benefiting from the sale of issued securities and to interlocking directorates);

1.12 Implement section 311 of the Federal Power Act (relating to investigations regarding the generation, transmission, distribution, and sale of electric energy), as the Commission determines appropriate to perform its functions;

1.13 Implement sections 1(b) and 1(c) of the Natural Gas Act (ch. 556, 52 Stat. 821 (1938)(15 U.S.C. 717)) (relating to certain exemptions from the provisions of the Natural Gas Act);

1.14 Implement section 3 of the Natural Gas Act with respect to the decision on cases assigned to the Commission by rule;

1.15 Implement section 5(b) of the Natural Gas Act (relating to the investigation and determination of the cost of production or transportation of natural gas), as the Commission determines appropriate to perform its functions;

1.16 Implement section 10 of the Natural Gas Act (relating to annual and periodic or special reports), as the Commission determines appropriate to perform its functions;

1.17 Implement section 12 of the Natural Gas Act (relating to officers or directors benefiting from the sale of issued securities);

1.18 Implement section 19 of the Natural Gas Act (relating to rehearings on orders);

1.19 Implement the Interstate Commerce Act (49 U.S.C. 1, et seq.) and other statutes which formerly vested authority in the Interstate Commerce Commission or the chairman and members thereof, as such statutes relate to the transportation of oil by pipeline, to the extent that such statutes are not transferred to, and vested in, the Commission by section 402(b) of the DOE Act, provided that this paragraph does not include any of the authority under section 11 of the Clayton Act (15 U.S.C. 21);

1.20 Issue orders, and take such other action as may be necessary and appropriate, to direct the Energy Information Administration to gather energy information pursuant to the Federal Energy Administration Act of 1974 or the Energy Supply and Environmental Coordination Act of 1974 to the extent necessary or appropriate to the exercise of regulatory functions of the Commission;

1.21 In reference to regulating the imports and exports of natural gas under the National Gas Act (ch. 556, 52 Stat. 821 (1938)(15 U.S.C. 717)), Executive Order No. 10485, as amended by Executive Order No. 12038, and section 301(b), 402(e) and (f) under the Department of Energy Organization Act (Public law 95-91, 91 Stat. 565 (42 U.S.C. 7101 et seq.),

A. Approve or disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports, except when the Assistant Secretary for Fossil Energy exercises the disapproval authority pursuant to the Delegation of Authority to the Assistant Secretary for Fossil Energy.

B. Carry out all functions under sections 4, 5, and 7 of the Natural Gas Act.

C. Issue orders, authorizations, and certificates which the Commission determines to be necessary or appropriate to implement the determinations made by the Assistant Secretary for Fossil Energy under the Delegation of Authority to the Assistant Secretary and by the Commission under this subparagraph. The Commission shall not issue any order, authorization, or certificate unless such order, authorization, or certificate adopts such terms and conditions as are attached by the Assistant Secretary for Fossil Energy pursuant to the Delegation of Authority to the Assistant Secretary of Fossil Energy.

1.22 Implement section 216(h) of the Federal Power Act, and specifically paragraphs (2), (3), (4)(A)-(B), and (5), to coordinate federal authorizations and related environmental reviews, and to prepare a single environmental review document, for electric transmission facilities in national interest electric transmission corridors designated pursuant to section 216(a) of the Federal Power Act, for which an applicant has submitted an application to the Commission for issuance of a permit for construction or modification under section 216(b) of the Federal Power Act.

2. RESCISSION. Delegation Order 00-004.00 is hereby rescinded.

3. LIMITATIONS.

3.1 In exercising the authority delegated in paragraphs 1.1B through 1.1F in this Order, or redelegated pursuant thereto, the delegate(s) shall be governed by the rules and regulations of the Department of Energy and the policies and procedures prescribed by the Secretary or delegate(s).

3.2 Nothing in this Order precludes the Secretary from exercising any of the authority delegated by this Order.

3.3 Except as provided in paragraph 1.14, this Order does not include the authority to carry out the functions delegated herein to the extent such functions are vested in the Secretary pursuant to his authority to regulate the exports or imports of natural gas or electricity, under section 402(f) of the DOE Act; provided that the Secretary may from time to time delegate to the Commission such other authority under section 3 of the Natural Gas Act as may be determined appropriate.

3.4 The Commission shall consult with the Administrator of the Energy Information Administration (AEIA@) with respect to the exercise of functions under paragraphs 1.7, 1.10, 1.12, 1.15, 1.16, and 1.20, as EIA considers appropriate.

3.5 Any amendments to this Order shall be in consultation with the Department of Energy General Counsel.

4. AUTHORITY TO REDELEGATE.

4.1 Except as expressly prohibited by law, regulation, or this Order, the Commission may delegate, this authority further, in whole or in part.

4.2 Copies of redelegations and any subsequent redelegations shall be provided to the Office of Information Resources, which manages the Secretarial Delegations of Authority system.

5. DURATION AND EFFECTIVE DATE.

5.1 All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are ratified, and remain in force as if taken under this Order, unless or until rescinded, amended or superseded.

5.2 This Order is effective May 16, 2006.

Samuel W. Bodman
Secretary of Energy

DEPARTMENT OF ENERGY
REDELEGATION ORDER NO. 00-006.02
TO THE ASSISTANT SECRETARY FOR FOSSIL ENERGY

1. DELEGATION. Pursuant to section 202(b) of the Department of Energy Organization Act (Public Law 95-91, 42 U.S.C. 7132(b)) and the Secretary of Energy's Delegation Order to the Under Secretary for Science (and Energy), I delegate to the Assistant Secretary for Fossil Energy, authority to take the following actions:

1.1 In reference to the Great Plains project under section 19(g)(2) of the Federal Non nuclear Energy Research and Development Act of 1974 (Public Law 93-577, as amended by Public Law 95-238)(the Federal Nonnuclear Act) and as provided by section 646(a) of the Department of Energy Organization Act (Public Law 95-91):

A. Carry out all functions of the Contracting Officer as that term is defined in the Asset Purchase Agreement dated as of October 7, 1988, and amended as of October 31, 1988, February 16, 1994, and December 21, 1998, between the United States of America, Dakota Gasification Company, Dakota Coal Company and Basin Electric Power Cooperative, which was executed as part of the conveyance of the Department of Energy's (Department or DOE) interests in the Great Plains Coal Gasification Project in Beulah, North Dakota, to Dakota Gasification Company and Dakota Coal Company.

B. Undertake all actions that are necessary and proper, on behalf of the United States of America, acting by and through the Secretary of Energy, to administer all agreements and contracts entered into by the Department of Energy in connection with the conveyance of the Department's interests in the Great Plains project.

In exercising the authority delegated by this order, the delegate may act without regard to the provisions of the Federal Property and Administrative Services Act of 1949, as amended, except section 207 of that Act (40 U. S. C. 5488), or any other law, as specifically provided for by section 19(g)(2) of the Federal Nonnuclear Act, supra.

1.2 In reference to the Naval Petroleum Reserves:

A. Perform all functions vested in me by Subtitle B of the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104-106) relating to the sale of Naval Petroleum Reserve Numbered 1, including the finalization of equity.

B. Perform the functions specified in 10 U.S.C. 7427 and 7428, and vested in me by the President of the United States in Executive Order No. 12929, in order to meet the goals and objectives of the Naval Petroleum Reserves.

C. Perform all functions vested in me by law (10 U.S.C. 7420-7439, including 10 U.S.C. 7420 note) relating to the administration of and jurisdiction over the Naval Petroleum Reserves, except for condemnation proceedings and the execution of procurement contracts with non-Governmental entities affecting such Reserves.

D. Perform all duties and responsibilities required by the Unit Plan Contract between the United States of America and Chevron U.S.A., Inc., numbered Nod-4219, dated June 19, 1944, as amended; the Amendatory and Supplemental Agreement, between the same parties, numbered Nod-8477, dated December 22, 1948, as amended; and the Agreement to Terminate the Unit Plan Contract, between the same parties, dated February 5, 1998.

E. Perform all duties and responsibilities relative to the disposition of the United States share of petroleum produced from the Naval Petroleum Reserves to or for the Department of Defense and the Strategic Petroleum Reserve pursuant to 10 U.S.C. 7430(k) and (l).

F. Perform all functions vested in me by the provisions of Section 3404(b) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 10 USC 7420 note) for the disposition by sale, of Naval Petroleum Reserve Numbered 3.

1.3 In reference to the regulation of imports and exports of natural gas:

A. Perform the functions vested in me by sections 301(b) and 402(f) of the Department of Energy Organization Act to regulate natural gas under section 3 of the Natural Gas Act, as amended by section 201 of the Energy Policy Act of 1992 (15 U.S.C. 717b):

1. Consistent with the authority delegated by this Order, the Assistant Secretary may attach such terms and conditions to import and export authorizations as the Assistant Secretary shall determine to be appropriate.

2. The authority delegated by this Order does not include the authority to approve the construction and operation of particular facilities, the site at which such facilities shall be located, and, with respect to natural gas that involves the construction of new

domestic facilities, the place of entry for imports or exit for exports, except the Assistant Secretary is authorized to disapprove the construction and operation of particular facilities, the site at which such facilities shall be located, and, with respect to natural gas that involves the construction of new domestic facilities, the place of entry for imports or exit for exports.

B. Establish and review priorities for the curtailment of natural gas pursuant to the Natural Gas Act (15 U.S.C. 717), sections 401, 402, and 403 of the Natural Gas Policy Act of 1978 (Public Law 95-621, 15 U.S.C. 3391-3393); and consult with the Deputy Secretary concerning energy emergency-related curtailment policy guidance, as necessary or appropriate.

1.4 Exercise the authority of the Secretary of Energy under Subtitle J of the Energy Policy Act of 2005 (Public Law 109-58, 42 U.S.C. 16371 to 16378). The authority specifically provided to the National Energy Technology Laboratory pursuant to Subtitle J of the Energy Policy Act of 2005 shall not be affected by this Order.

1.5 Participate in any proceeding before the Federal Energy Regulatory Commission, pursuant to the provisions of section 405 of the Department of Energy Organization Act (42 U.S.C. 7175), or in any proceeding before any Federal or State agency or commission whenever such participation is related to the exercise of authority delegated to the Assistant Secretary.

1.6 Formulate and establish enforcement policy, initiate and conduct investigations, conduct conferences, administrative hearings and public hearings, prepare required reports, issue orders, and take such other action as may be necessary or appropriate to perform any of the above functions.

1.7 Under section 988 of the Energy Policy Act of 2005:

A. Approve requests for reduction or elimination of the cost sharing requirement for research and development activity of an applied nature in accordance with 988(b)(3);

B. Approve requests for reduction of the cost sharing requirement for the non-federal share of demonstration and commercial application activities in accordance with 988(c)(2); and

C. Exclude research and development of a basic or fundamental nature from the cost sharing requirements, as described in 988(b)(2).

These authorities may be exercised only after providing notification to the Office of the Secretary. Furthermore, the approval Authorities

delegated in subparagraphs A and B can be exercised only in coordination with the Secretarial Policy Statement entitled, "Application and Reduction or Elimination of Cost Share Requirements Under Section 988 of EPACT 2005, Pub.L. 109-58." The authorities of this paragraph may be redelegated to the Chief Operating Office and no further.

1.8 Establish, alter, consolidate or discontinue such organizational units or components within assigned organizational elements as deemed to be necessary or appropriate

A. In exercising this authority, or as redelegated pursuant thereto, delegates will be limited by approved budgets, staffing level allocations, and Senior Executive Service and other executive resource position allocations. Organizational changes shall not be announced or implemented until appropriate union coordination and other pre-release clearances have been obtained.

B. This authority does not include approval of additional, deletion, or transfer of mission and functions of or between Departmental Headquarters or Field Elements, which authority is reserved to the Secretary.

C. Heads of Departmental Headquarters Elements may delegate the authority to alter or consolidate organizational elements further, in whole or in part, consistent with the terms of the Department of Energy Organization Act, to an official or officials one level below the Head of the Departmental Headquarters or Field Element.

D. The authority to establish or discontinue organizational elements at the first or second level below the Head of the Departmental Headquarters or Field Element may not be redelegated.

E. Acting Heads of Departmental Headquarters or Field Elements may not redelegate these authorities and may only establish, alter, consolidate or discontinue organizational units at the third level and below. During the tenure of an acting Head of a Departmental Headquarters or Field Element, organizational units below the Head of the Departmental Headquarters and Field Elements may not exercise redelegations granting the authority to alter or consolidate units.

1.9 Pursuant to 18 U.S.C. 208(b)(3), after consultation with the Department's Designated Agency Ethics Official, issue conflict-of-interest waivers for special Government employees serving on a Federal Advisory Committee that is administratively supported by the Office of Fossil Energy.

1.10 For all programs funded by Fossil Energy appropriations, exercise the authority of the Secretary of Energy under the Energy and Water Development and Related Agencies Appropriations Act, 2010 (Pub. L. 111-85), Title III, Department of Energy, Energy Programs, Fossil Energy Research and Development, to vest fee title or other property interests acquired in any entity, including the United States.

1.11 Exercise the authority of the Secretary of Energy under Title IV, Subtitle A, Section 402(f) of the Energy Policy Act of 2005 (Public Law 109-58, 42 U.S.C. 15962) with respect to scheduled completion of selected Clean Coal Power Initiative projects.

2. RESCISSION. Redelegation Order 00-002.04F is hereby rescinded.

3. LIMITATION.

3.1 In exercising the authority delegated in this Order, a delegate shall be governed by the rules and regulations of the Department of Energy and the policies and procedures prescribed by the Secretary or delegate(s).

3.2 Nothing in this Order precludes the Secretary or the Under Secretary for Science (and Energy) from exercising any of the authority delegated by this Order.

3.3 Nothing in this Order shall be construed to supersede or otherwise interfere with the authorities provided to the Administrator for Nuclear Security by law or by delegation. Furthermore, nothing herein constitutes authority to exercise authority, direction, or control of an employee of the National Nuclear Security Administration or its contractors.

3.4 Any amendments to this Order shall be made in consultation with the Department of Energy General Counsel.

4. AUTHORITY TO REDELEGATE.

4.1 Except as prohibited by law, regulation, or this Order, the Assistant Secretary for Fossil Energy may delegate this authority further, in whole or in part.

4.2 Copies of redelegations and any subsequent redelegations shall be provided to the Office of Management, which manages the Secretarial Delegations of Authority system.

5. DURATION AND EFFECTIVE DATE.

5.1 All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are ratified and remain in force as if taken under this Order, unless or until rescinded, amended or superseded.

5.2 This Order is effective NOV 17 2014.

Ernest J. Moniz
Secretary of Energy