148 FERC ¶ 61,237
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Cameron LNG, LLC	Docket Nos. CP13-25-002
Cameron Interstate Pipeline, LLC	CP13-27-002

ORDER DENYING REHEARING

(Issued September 26, 2014)

1. On August 7, 2014, Sierra Club, Gulf Restoration Network, and RESTORE (collectively, Sierra Club) filed a timely request for rehearing of a July 29, 2014 Notice[1] issued by the Secretary of the Commission that rejected as untimely Sierra Club's request for rehearing of the order in *Cameron LNG, LLC*.[2] As discussed below, this order denies Sierra Club's August 7 rehearing request. While we are not unsympathetic to that request, we believe the result reached here is compelled by a consideration of the pertinent statutes, regulations, and policy implications. For clarity, we also explain why the arguments in Sierra Club's original request for rehearing would have been unavailing, in any event.

I. Background

2. The June 19 Order authorized Cameron LNG, LLC (Cameron LNG), under section 3 of the Natural Gas Act (NGA),[3] to site, construct, and operate facilities for the liquefaction and export of domestically-produced natural gas (Liquefaction Project) at its existing liquefied natural gas (LNG) import terminal in Cameron, Louisiana. The Liquefaction Project facilities include: three liquefaction trains; an additional LNG storage tank (the fourth storage tank at Cameron LNG's terminal); facilities to store refrigerants and condensate products and an associated truck loading/unloading area; a construction dock; and miscellaneous facilities and other minor modifications to existing

[1] 148 FERC ¶ 61,073 (2014) (July 29 Notice).

[2] 147 FERC ¶ 61,230 (2014) (June 19 Order).

[3] 15 U.S.C. § 717b (2012).

facilities. Cameron LNG proposed to construct and place the three LNG trains into service in phases, with the first anticipated to be placed in service in 2017, and the second and third in 2018.

3. In addition, the June 19 Order granted Cameron Interstate Pipeline, LLC (Cameron Interstate) a certificate of public convenience and necessity under NGA section 7(c)[4] for the construction and operation of pipeline and compression facilities in Cameron, Calcasieu, and Beauregard Parishes, Louisiana (Pipeline Project). Cameron Interstate's Pipeline Project will enable it to transport up to 2.35 billion cubic feet per day of domestically-produced natural gas in a southerly direction to Cameron LNG's terminal for processing, liquefaction, and export. Cameron Interstate will construct approximately 21 miles of 42-inch-diameter pipeline, 15.5 miles of which is parallel to Cameron Interstate's existing system, allowing for the flow of gas from various pipeline interconnections to Cameron LNG's terminal. The Commission also granted Cameron Interstate authorization to: construct and operate the new Holbrook Compressor Station, consisting of 12 natural gas-driven compressor units; construct and operate a new interconnection with Trunkline Gas Company; modify four existing interconnections to expand the capacity of each interconnection; and construct and operate new metering facilities.

4. On Monday, July 21, 2014, at 5:00:25 p.m., Sierra Club filed electronically (e-Filed) a request for rehearing and stay of the June 19 Order. On July 29, 2014, the Secretary of the Commission issued the July 29 Notice, rejecting as untimely Sierra Club's request for rehearing, and explaining that because Sierra Club's rehearing request was filed after 5:00 p.m. Eastern time, the end of the Commission's regular business hours, the rehearing request was considered as filed on the next business day, i.e., Tuesday, July 22, 2014, which is one day after the 30-day statutory time period for filing rehearing requests of the June 19 Order.[5]

5. Sierra Club asserts that the Commission erred in finding that the request for rehearing of the June 19 Order was untimely because (a) under a "proper" interpretation of the Commission's regulations, times should be rounded to the nearest minute, and (b) the pertinent time is when the last byte of the rehearing request filed via the Internet is uploaded, not when the remaining steps of the filing process are completed. In the alternative, in the event the Commission considers the rehearing request to be untimely,

[4] 15 U.S.C. § 717f (2012).

[5] *See* 18 C.F.R. § 385.2001(a)(2) (2014) ("Any document received after regular business hours is considered filed on the next regular business day.").

Sierra Club contends that the Commission has the authority to accept its late filing and should do so in this case.

II. Rehearing Request

A. Overview of NGA Section 19 and Commission Regulations

6. NGA section 19(a) allows an aggrieved party to file a request for rehearing within 30 days after the issuance of a final Commission decision.[6] Rule 2007 of the Commission's Rules of Practice and Procedure provides that when the time period prescribed or allowed by statute falls on a weekend, holiday, or a day when the Commission is closed due to weather or other adverse conditions, the statutory time period does not end until the close of business of the next day which is not a weekend, holiday, or a day when the Commission is closed due to weather or other adverse conditions.[7] The Commission's business hours are "from 8:30 a.m. to 5:00 p.m.,"[8] and filings – paper or electronic – must be made before 5:00 p.m. in order to be considered filed on that day.

7. In 2007, the Commission amended its regulations to provide that all documents (with limited exceptions) could be filed electronically. In that proceeding, the Commission considered whether the filing deadline should be extended until midnight, noted objections to the idea, including "the personal hardship of late-hour filing, unfairness to paper filers, and the possibility that some filers would use the opportunity to

[6] 15 U.S.C. § 717r(a) (2012) ("Any person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order."). *See* 18 C.F.R. § 385.713(b) (2014) ("A request for rehearing by a party must be filed not later than 30 days after issuance of any final decision or other final order in a proceeding."). The 30-day deadline has not been altered since the statute's enactment in 1938.

[7] 18 C.F.R. § 385.2007(a)(2) (2014). In 2004, the Commission amended Rule 2007 to add the language addressing temporary closures due to weather or other adverse conditions, noting that, if filings required to be made by deadlines could be deemed untimely as a result of government closures, "[t]his would particularly be a problem in connection with statutory deadlines *that the Commission cannot extend*, such as the 30-day period for requesting rehearing of a Commission order." *Emergency Closures*, Order No. 645, FERC Stats. & Regs. ¶ 31,156, at P 2 (2003) (emphasis added).

[8] 18 C.F.R. § 375.101(c) (2014).

file improper reply comments in response to comments filed earlier in the day," and concluded that the filing deadline "will remain at close of business, i.e., 5:00 p.m., Eastern time."[9] Thus, applying the 5:00 p.m. filing deadline to electronic filings is not arbitrary: the Commission intended to provide paper filers and eFilers a level playing field.

8. The Commission subsequently issued notice stating that

> the time a filing is made is established when the last file uploaded appears in the table at the bottom of the File Upload screen. Filings made after the Commission's 5:00 pm Eastern time deadline are considered as having been filed on the following day. . . . Filers, particularly those filing requests for rehearing where the deadline for filing is set by statute and cannot be waived, are strongly encouraged to file well in advance of 5:00 pm to minimize the possibility that unexpected problems may delay the filing beyond the 5:00 pm Eastern deadline for filing.[10]

9. Filings with the Commission can be made by mail, hand delivery, and via the Internet.[11] Internet filings must be made in accordance with instructions provided by the Secretary of the Commission, which are available online at http://www.ferc.gov.[12] A document filed via the Internet is "deemed to have been received by the Commission at the time when *the last byte* of the document is received by the Commission."[13] In the case of electronic filings, a document is considered filed "on the date indicated in the acknowledgment that will be sent immediately upon the Commission's receipt of a

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[9] *Filing Via the Internet*, Order No. 703, 72 Fed. Reg. 65659 (Nov. 25, 2007), FERC Stats. & Regs. ¶ 31,259, at PP 30-31 (2007). *See also* Notice of Proposed Rulemaking, 72 Fed. Reg. 42330 (Aug. 2, 2007), FERC Stats. & Regs. ¶ 32,621 at P 21 (2007) (stating that "[c]urrently, both Internet and paper filings must be received by the close of business, i.e., 5 p.m. to be considered to have been filed on that date.").

[10] *Notice of Display of Time on Commission's Electronic Filing System*, Docket Nos. RM07-16-000 and RM01-5-000 (June 28, 2010) (citation omitted).

[11] 18 C.F.R. § 385.2001(a)(1) (2014).

[12] 18 C.F.R. § 385.2003(c)(1) (2014).

[13] 18 C.F.R. § 385.2003(c)(3) (2014) (emphasis added).

submission," and "[a]ny document received after regular business hours is considered filed on the next regular business day."[14]

10. These regulations, read in conjunction with NGA section 19(a), mean the deadline for filing requests for rehearing of the June 19 Order was July 21, 2014, at 5:00 p.m. The 30-day rehearing deadline was July 19, 2014, but that day was a Saturday. Thus, under Rule 2007, the NGA section 19(a) time period did not expire until Monday, July 21, 2014, at 5:00 p.m. As noted, the Sierra Club's rehearing request was filed at 5:00:25 (i.e., 25 seconds after 5:00 p.m.), when the Commission received the last byte of the file, and was time-stamped accordingly.

B. Interpretation of the Regulations

11. According to Sierra Club, a proper interpretation of the Commission's rules results in the conclusion that the rehearing request, made 25 seconds after 5:00 p.m., was timely. Sierra Club explains that because the Commission's rules do not specify time in seconds, the time should be "rounded to the nearest minute."[15]

12. Sierra Club's argument is contrary to the plain meaning of our regulations. Section 375.101(c), cited above, clearly states that our business hours are from 8:30 a.m. until 5:00 p.m. Rule 2001(a)(2) of the Commission's Rules of Practice and Procedure, in turn, states that "[a]ny document received after regular business hours is considered filed on the next regular business day."[16] Because the Sierra Club's request for rehearing was received after 5:00 p.m. on July 21, it must, pursuant to our regulations, be considered to have been filed on July 22.

13. Sierra Club cites no Commission precedent for rounding to the minute to determine filing times,[17] nor does it provide any case law supporting its theory. Contrary to Sierra Club's argument, we believe that the only reasonable interpretation of section

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[14] 18 C.F.R. § 385.2001(a)(2) (2014).

[15] Sierra Club August 7, 2014 Rehearing Request at 3.

[16] 18 C.F.R. § 385.2001(a)(2) (2014).

[17] In fact, our precedent is to the contrary. *See, e.g., Pacific Gas and Electric Co.*, 116 FERC ¶ 61,207 (2006) (notice rejecting rehearing request filed one minute and twelve seconds after the 5:00 p.m. deadline); *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,211 (2005) (Commission order dismissing as untimely a rehearing request filed 10 minutes after the 5:00 p.m. deadline).

375.101(c) and Rule 2001(a)(2) is to read the regulations literally. Were the Commission to adopt the Sierra Club's theory, entities appearing before the Commission would lose the certainty regarding filing deadlines that our regulations have hitherto provided. And once the Commission were to begin "rounding," it is difficult to know where the practice might stop. For example, if it is reasonable to round back from 5:00:25 p.m. to 5:00 p.m., it could be argued that the Commission should also round back from 5:29 p.m. (less than halfway before the next hour) to 5:00 p.m., or even from 8:30 p.m. (halfway between the end of the Commission's business day and the beginning of the next calendar day). Moreover, Sierra Club overlooks the fact that section 375.101 is a general regulation with application beyond the context of electronic filings and therefore requires the equitable treatment of paper filers, so that accepting the Sierra Club's interpretation would require the Commission to also accept late paper filings.

14. Sierra Club asserts in essence that the Commission should apply its clear, precise regulations in a vague and uncertain manner. We decline to do so.

C. The Four Steps

15. Sierra Club argues that, consistent with Rule 2003,[18] the Commission received the last byte of the rehearing request before the 5:00 p.m. deadline. In a declaration attached to the August 7 rehearing request, Mr. Nathan Matthews, Sierra Club's attorney, describes the steps he took to upload the rehearing request:

> 8. The [next] step is selection of one or more files to upload, and uploading of these files. We began this step prior to 2:00 p.m. Pacific Time [i.e., 5:00 p.m. Eastern Time].
>
> 9. I did not check or make note of the time at which this step was completed, nor did Ms. Spiegel.
>
> 10. I nonetheless believe that the document was fully uploaded prior to 2:00:00 p.m. Pacific Time on July 21, 2014. I base this belief off the fact that there were *four additional steps* that we completed before the e-filing was submitted, the fact that according to the efiling website, the entire process was completed at 2:00:25 Pacific Time, and my experience with completing these four additional steps in other filings as it generally takes at least thirty seconds for me, Ms. Spiegel,

[18] 18 C.F.R. § 385.2003(c)(3) (2014).

> or the two of us together to complete these steps. (Emphasis added.)

16. Mr. Matthews' understanding of how the eFiling system time-stamps submissions is not correct. The electronic time stamp is generated at the moment the last byte of the document is received: the system does not wait for the completion of the four additional steps that Mr. Matthews mentions.[19] The Commission has made it clear that it will "rely on its electronic time stamp as to the date and time for determining whether electronic requests for rehearing are submitted untimely after close of business on the date that such filings are due."[20]

17. The foregoing demonstrates that the Sierra Club's request for rehearing was not timely filed and so was properly rejected.

D. Waiver of the Regulations

18. Sierra Club argues that the Commission has the authority to accept a late rehearing request and that the Commission should exercise that authority in this case. The organization asserts that the Commission's authority to extend NGA section 19(a)'s 30-day time period for rehearing requests is limited because it is a statutory, jurisdictional provision, but that the Commission has equitable power to extend non-jurisdictional time limits. Sierra Club states that nothing in NGA section 19(a) compels the Commission to treat filings received after business hours as filings received the following business day. Rather, it contends, the Commission could waive the 5:00 p.m. deadline and accept filings until midnight Eastern time, noting that Rule 2007 extends section 19(a)'s 30-day time period when the 30-day deadline falls on a weekend or holiday.

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[19] After the file has been completely uploaded, the last byte received, and the timestamp generated, the filer must do four additional things: (1) select a name on behalf of an organization or individual; (2) add contact information; (3) review the submittal description; and (4) review the overview page of information added. After the Sierra Club filed its August 7 rehearing request, Commission eFiling staff conducted several tests to verify that the eFiling system functions as described above. In each of these trials, Commission staff confirmed that the eFiling timestamp coincides with the receipt of the last byte and not with the completion of the four additional steps.

[20] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, 134 FERC ¶ 61,046, at P 1 n.2 (2011). *See also Notice of Display of Time of Time on Commission's Electronic Filing System*, Docket Nos. RM07-16-000 and RM01-5-000 (stating that "the time a filing is made is established when the last file uploaded appears in the table at the bottom of the File Upload screen").

19. It is clear that the Commission cannot waive the 30-day statutory deadline for filing requests for rehearing.[21] Rule 2007(a)(2), which provides that the last day of a time period will not end on a weekend, legal holiday, or other day when the Commission is otherwise closed for business does not extend the 30-day deadline, but rather provides a means for the Commission to calculate the end of the statutory period, in a manner similar to the federal courts.[22] In *Bartlik v. U.S. Department of Labor*,[23] for example, the court rejected the assertion that Rule 26(a) of the Federal Rules of Appellate Procedure could not be invoked to extend a statutory deadline to the next business day, concluding that the rule did "nothing more than provide the court and the parties with a means of determining the beginning and end of a statute of limitations prescribed elsewhere in law."[24] The court concluded that provisions such as the weekend/holiday rule do not expand court jurisdiction, but rather provide a procedural computational rule.[25] Similarly, Rule 2007 (which is consistent with Rule 26 of the Federal Rules of Appellate Procedure) is not an example of the Commission extending the NGA section 19(a) statutory deadline, something it lacks the power to do.[26]

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[21] *See Boston Gas Co. v. FERC*, 575 F.2d 975, 978 (1st Cir. 1978), where the court rejected the petitioner's argument that the Commission had discretion to waive the 30-day deadline, explaining that "were we to adopt petitioner's interpretation of the statute, we would have to permit the Commission to pick and choose among those parties filing untimely applications for rehearing, selecting which of them, if any, are entitled to judicial review. We see no basis for replacing the uniform ground rules the statute so clearly sets forth with a rule permitting either unguided discretion or inadvertence to control the jurisdiction of the federal courts." *See also Associated Gas Distributors v. FERC*, 824 F.2d 981, 1005 (D.C. Cir. 1987).

[22] As noted above, our rules operated to give the Sierra Club two extra days to make its filing, due to the fact that the 30th day after issuance of the June 19 Order was a Saturday, yet it still failed to file by this extended deadline.

[23] 62 F.3d 163 (6th Cir. 1995).

[24] *Id*. at 166.

[25] *Id. See also Tennessee Gas Pipeline Co.*, 95 FERC ¶ 61,169, at 61,547 (2001) (explaining that Rule 2007 is comparable to Rule 26(a) and also describes the procedures by which time is computed).

[26] Sierra Club cites *Corning Glass Works v. FERC*, 675 F.2d 392 (D.C. Cir. 1982), and *Cities of Batavia v. FERC*, 672 F.2d 64 (D.C. Cir. 1982), as examples where the courts have approved Commission authority to "extend the jurisdictional 30 day limit."

(continued…)

20. Sierra Club attempts to distinguish *Cities of Campbell v. FERC*[27] and *Boston Gas v. FERC*,[28] in which the courts affirmed that requests for rehearing filed beyond the 30-day deadline were jurisdictionally barred, on the basis that they involve requests for rehearing filed days late, not seconds late. However, these cases unquestionably support a strict interpretation of the 30-day deadline. While the Sierra Club states that filing seconds late is "plainly de minimis," it cites no authority that supports the proposition that the failure to meet a deadline by a relatively short time is excusable when a longer delay is not.

21. The Commission addressed similar arguments to those made by the Sierra Club in *Tennessee Gas Pipeline Co.*,[29] where a rehearing request was filed late despite a Postal Service guarantee that it would timely deliver the pleading. We concluded that "[s]ection 19(a) is a jurisdictional requirement that the Commission does not have the discretion to waive, even for good cause."[30] With regard to Rule 2007, the Commission observed that "Rule 2007 does not operate to waive the 30-day filing requirements for rehearing requests established by NGA section 19(a); it describes the procedures by which time is computed."[31] On appeal, the court affirmed the Commission, noting that "there was no reason [the late filer] had to wait until the last minute to file its petition."[32]

These cases, however, are inapposite. In *Corning Glass Works*, the court merely acknowledged in a footnote the Commission's adoption of Rule 2007 and found that a rehearing request, filed on a Monday where the 30th day after issuance of the Commission order in question was Saturday, "met the 30-day limit, as the Commission defines that limit." 675 F.2d at 396 n.12. Here, the Sierra Club was in the exact same position – being allowed by our rules to file on Monday even though the 30th day was Saturday – but failed to meet even the extended deadline. *Cities of Batavia* involved application of the provision of our regulations that does not include holidays when determining the end of the 30-day period.

[27] 770 F.2d 1180 (D.C. Cir. 1985).

[28] 575 F.2d 975 (1st Cir. 1978).

[29] 95 FERC ¶ 61,169 (2001).

[30] *Id*. at 61,547.

[31] *Id.*

[32] *Londonderry Neighborhood Coalition v. FERC*, 273 F.3d 416, 425 (1st Cir. 2001).

22. Sierra Club's citation to *Dayton Power & Light Co. v. FPC*[33] is unavailing. In that case, decided more than 50 years ago, well before the publication of our filing rules and the advent of modern technology, the court held that receipt of a timely rehearing request by the Commission's general counsel put the Commission on notice of the filing. Regardless of whether that case has continued vitality, the situation here is fundamentally different, given that the Sierra Club did not timely deliver its rehearing request to any Commission official.[34] *Natural Gas Pipeline Co. of America v. FPC*[35] is similarly inapplicable, given that that case involved the receipt of a timely telegram that the Commission had accepted as a rehearing request.

23. To the extent that the Sierra Club suggests that we should waive our regulations, it presents no compelling justification for doing so. The Sierra Club does not suggest that there was any delay or other error in the Commission's eFiling system that impacted the organization's ability to timely file its pleading. Further, the Sierra Club provides no explanation for why it waited until minutes before the close of business to begin making its filing, and does not allege any extraordinary circumstances or hardship that caused its delay. Indeed, the *Londonderry Neighborhood Coalition* court's admonition regarding unexcused last-minute filings applies with full force here.

24. The Sierra Club does state that it represents public interests in environmental protection and public health, rather than private interests, and argues that the delay of 25 seconds did not pose any harm or prejudice to Cameron LNG, Cameron Interstate, or any other party.

25. We cannot respond to procedural arguments based on the bona fides of the entity making them, but rather must treat entities appearing before us in an even-handed manner. With regard to harm or prejudice, Sierra Club underestimates the potential harm that granting its request would pose to the administrative process. Were we to apply the regulations as the Sierra Club suggests, the certainty provided to entities interested in Commission proceedings under our current rules would be compromised, and those that

[33] 251 F.2d 875 (D.C. Cir. 1957).

[34] *See Turtle Bayou Gas Storage Co.*, LLC, 139 FERC ¶ 61,033, at P 8 (2012) (distinguishing *Dayton Power & Light* and affirming rejection of rehearing request filed one hour and 25 minutes late).

[35] 253 F.2d 3 (3d Cir. 1958).

play by the rules would run a constant risk that the Commission might allow others to do otherwise.[36]

E. Opportunity to Respond

26. On July 23, 2014, Cameron LNG and Cameron Interstate filed a motion to strike Sierra Club's rehearing request of the June 19 Order as untimely. Cameron LNG and Cameron Interstate also allege that the rehearing request of the June 19 Order is procedurally deficient for lack of citation to any precedent or legal authority in its statement of errors and that RESTORE is not a party to the proceeding and not qualified to file a rehearing request.

27. Sierra Club argues the Commission's July 29 Notice erred by "granting relief" to Cameron LNG and Cameron Interstate without allowing Sierra Club time to answer Cameron LNG and Cameron Interstate's July 23 filing. In support, Sierra Club cites section 385.213(a)(3) of the Commission's Rules and Regulations,[37] which permits a party to file an answer to any pleading as long as an answer is not otherwise prohibited.

28. Sierra Club misunderstands the nature of the July 29 Notice. The notice was not, as Sierra Club suggests, "granting relief" to Cameron LNG and Cameron Interstate; rather, consistent with past practice, the Commission issued the July 29 Notice *sua sponte*, i.e. irrespective of a filing by Cameron LNG and Cameron Interstate.[38] Sierra Club acknowledges that the July 29 Notice did not mention Cameron LNG and Cameron Interstate's July 23 filing. Instead, the July 29 Notice rendered Cameron LNG and Cameron Interstate's July 23 motion to strike (and all subsequent filings stemming from the July 23 motion) moot.[39] Thus, Sierra Club's citation to section 385.213 of the

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[36] *See Boston Gas*, 575 F.2d 975, 979 (1st Cir. 1978) ("All parties to a proceeding before the Commission, as well as the Commission itself, have the statutory right to be free from prolonged uncertainty resulting from delayed efforts to resolve an issue.").

[37] 18 C.F.R. § 385.213(a)(3) (2014) ("An answer may be made to any pleading, if not prohibited under paragraph (a)(2) of this section.").

[38] *See, e.g.*, *Turtle Bayou Gas Storage Co., LLC*, 136 FERC ¶ 61,052 (2011) (*sua sponte* notice dismissing late rehearing request), *reh'g denied*, 139 FERC ¶ 61,033 (2012).

[39] Sierra Club also describes its August 7 rehearing request as an answer to Cameron LNG and Cameron Interstate's July 23 filing. Cameron LNG and Cameron Interstate replied to Sierra Club's answer on August 13, 2014.

Commission's regulations is unavailing because there is no requirement that the Commission wait for pleadings from the parties before rejecting an untimely pleading. In any event, Sierra Club's August 7 rehearing request afforded it ample opportunity to advance its arguments, and this order fully addresses those arguments. Thus, the Commission did not err in issuing the July 29 Notice before Sierra Club could respond to Cameron LNG and Cameron Interstate's July 23 motion. Cameron LNG and Cameron Interstate's July 23 and August 13, 2014 answers, and Sierra Club's July 23, 2014 answer, are dismissed as moot.

29. While we are denying the Sierra Club's request for rehearing of the July 29 Notice, we nonetheless address the substance of the rehearing request below, to provide additional clarity.

F. Sierra Club's July 22 Rehearing Request

30. In its rehearing request of the June 19 Order, Sierra Club contends that (1) the Commission should have considered induced production as a cumulative effect of the project; (2) the Commission should have considered changes in electricity generation, including greenhouse gas emissions, as indirect and cumulative effects of the project; (3) the Commission improperly limited the scope of alternatives by: (a) concluding that an alternative of using grid power at the Holbrook Compressor station would be equivalent to relying on natural gas compressors; (b) rejecting an alternative design that incorporates additional waste heat recovery; and (c) rejecting a design alternative that incorporates carbon capture and sequestration of emissions from amine treatments units; and (4) the Commission failed fully to consider wetlands by: (a) not issuing a supplemental environmental impact statement, including public comment, for the conclusion that the recommended mitigation adequately compensates for the impact; and (b) concluding, without factual support, that creation of tidal fresh/intermediate marsh will adequately mitigate for loss of three other wetland types. We note that each of these contentions has been raised previously and, as discussed below, was fully addressed in the June 19 Order. Thus, even if Sierra Club's request for rehearing had been timely filed, it presents no basis upon which to grant rehearing.

1. Induced Production

31. In the June 19 Order, the Commission addressed the issues Sierra Club raises with respect to induced production. The Commission concluded that Sierra Club had failed to identify "any induced production specifically connected to the Cameron LNG proposal" and that the purpose of the Liquefaction Project is "not to facilitate additional shale production, which may occur for reasons unrelated to the project and over which the

Commission has no jurisdiction."[40] The Commission determined that any induced production would not be reasonably foreseeable, as that term is defined by Council on Environmental Quality (CEQ) guidance, given the multiple pipeline connections that could supply gas to the project from "essentially all of the production areas in the lower-forty-eight."[41] CEQ's guidance provides that "it is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful."[42] Accordingly, nothing raised by Sierra Club with regard to induced production would have warranted relief.

2. Changes to Electricity Generation

32. Sierra Club argues the Commission erred by not studying the environmental effects related to the future relative prices of natural gas and coal. Analysis of this issue would require extensive speculation as to the future prices of natural gas and coal and how use of coal would be affected by a relative increase in the price of natural gas. The Commission staff concluded that environmental effects related to changes in domestic power production were beyond the scope of the National Environmental Policy Act review required for this project, and nothing contained in Sierra Club's rehearing request warrants changing that determination.[43] Further, as the Commission said in the June 19 Order, approval of the export of natural gas as a commodity is within the exclusive jurisdiction of the Department of Energy.[44]

3. Scope of Alternatives

33. The final environmental impact statement (EIS) thoroughly evaluated alternatives related to: (1) grid power as an alternative to natural gas fired compressors; (2) waste heat generation; and (3) carbon capture and sequestration.

34. The final EIS concluded requiring grid power at the Holbrook compressor station to power electric compression would have required Beauregard Electric Co-Op to

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[40] June 19 Order, 147 FERC ¶ 61,230 at PP 30, 68.

[41] *Id.* P 69.

[42] *Considering Cumulative Effects Under the National Environmental Policy Act* (CEQ 1997, at 8, Table 1-2).

[43] Final EIS at 1-9 through 1-11.

[44] June 19 Order, 147 FERC ¶ 61,230 at P 28.

construct 3.5 miles of 230-kV new electric transmission line adjacent to the proposed Cameron Interstate pipeline right-of-way to the Holbrook Compressor Station site.[45] Further, grid power would have required a new switchyard in or near the Holbrook Compressor site.[46] The final EIS also concluded switching from on-site generation to purchased power would not result in significant environmental advantages.[47]

35. The final EIS also examined the alternative of using on-site generation to power the compression and determined that on-site electricity generation would be significantly more expensive – it would cost $7 million more per year, representing a 60 percent cost increase.[48] The final EIS also found performance limitations to on-site electricity generation. Specifically, the reciprocating drivers proposed by Cameron Interstate provide the highest level of service; electric drivers are not variable speed controlled and would not provide the flexibility and quality of service required for the station.[49] While Sierra Club suggests the analysis was "internally inconsistent," the final EIS reasonably concluded that the subpar functionality of on-site generation sufficiently disqualified on-site generation from additional scrutiny.

36. The final EIS also fully addressed on-site electricity generation as an alternative to grid power both for terminal power and for the liquefaction units. The final EIS included Table 3.4.2-1[50] comparing estimates of various emissions for on-site versus grid power; however, the final EIS concluded because grid power would come from a number of sources, it is not possible to determine with certainty the difference of the emissions between the on-site and grid design options. Therefore, the final EIS compared direct impacts from on-site generation with indirect impacts from grid power. The comparison generally shows greater emissions from on-site generation; thus, the final EIS reasonably concluded there is no significant environmental advantage to on-site generation.

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[45] Final EIS at 3-31.

[46] *Id.* at 3-31.

[47] *Id.* at 3-32.

[48] *Id.* at 3-31.

[49] *Id.* at 3-31 through 3-32.

[50] *Id.* at 3-25.

37. The final EIS also adequately discussed Sierra Club's suggestion of recovering waste heat.[51] The final EIS explained that recovery of waste heat requires a turbine with over 15,000 horsepower operated at a 60 percent load factor. Because of uncertainty that Cameron LNG would achieve the 60 percent load factor, the final EIS determined "it is premature to suggest any further actions for waste heat recovery facilities to generate electricity."[52] While acknowledging uncertainty, Sierra Club argues that the available evidence indicates Cameron LNG's intent to operate the facilities at a 100 percent load factor. Intentions, however, do nothing to remove the uncertainty that prevents exploration of waste heat recovery alternatives. We note that there will be waste heat recovery for process heat on three of the six turbines used in the liquefaction process. However, the practicality of using waste heat recovery on all of the turbines was rendered even more uncertain given the shift from on-site electricity generation to grid power.

38. The final EIS included discussion of the Freeport LNG Liquefaction Project and acknowledged the technical feasibility of capturing carbon dioxide (CO2) during pre-treatment.[53] The final EIS also considered the feasibility of CO2 storage and transport. The final EIS observed that the geological formations in the region of the Liquefaction Project do not allow for the construction of CO2 storage facilities. Moreover, while transport might theoretically be an option, there are no pipelines available that could provide such transportation service[54] and constructing new CO2 pipeline to interconnect with the nearest existing CO2 pipeline with available capacity would require construction of more than 20 miles of new pipeline.[55] Under these circumstances, the final EIS reasonably eliminated carbon capture and storage from further consideration.[56]

4. Wetlands

39. Sierra Club argues that the Commission should have issued a supplemental EIS because the draft EIS incorrectly understated the quantity of jurisdictional wetlands that would be affected by the project. Sierra Club also argues that the final EIS lacked factual

[51] *Id.* at L-85.

[52] *Id.* at L-85.

[53] *Id.* at L-89.

[54] *Id.* at 4-234.

[55] *Id.* at 4-234.

[56] *Id.* at 4-234.

support for the conclusion that the acres chosen to mitigate for impacts to wetlands are adequate.

40. The final EIS adequately addressed wetlands. Initially, the Army Corps of Engineers (COE) only identified 99.2 acres of jurisdictional wetlands,[57] resulting in 129 acres of mitigation. The COE subsequently revised its finding and identified 213.5 acres of jurisdictional wetlands, resulting in roughly 256 acres of mitigation. However, while the final EIS acknowledged the increase in COE jurisdictional wetlands as a result of the COE's revised determination,[58] the draft EIS and final EIS both stated substantially the same number of wetlands acres (roughly 213) as affected.[59] In other words, the wetland impacts analyzed in both the draft and final EIS were the same, and only the mitigation increased.[60] Under these circumstances, where the impact to the environment did not change from the draft to the final EIS, a supplemental EIS was not required. Finally, the choice of mitigation acres is made pursuant to a Clean Water Act section 404 permit and Rivers and Harbor Act section 10 permit, which were reviewed and approved by the COE. Thus, the final EIS reasonably concluded that the mitigation was appropriate and that impacts on wetlands would not be significant.

The Commission orders:

(A) Sierra Club's August 7, 2014 rehearing request is denied. Sierra Club's August 7, 2014 answer is dismissed as moot.

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[57] Draft EIS at 4-30.

[58] The COE reversed its decision on the jurisdiction of the wetlands on December 31, 2013, and issued a revised permit on February 12, 2014.

[59] *See* final EIS at 4-30 and 5-3 (213.5 acres) and draft EIS at 4-30 and 5-3 (213.7 acres).

[60] Final EIS at L-67 ("On the contrary, the draft EIS stated that even with only mitigating for 99.2 acres of jurisdictional wetland impact, we concluded that impacts on wetlands would not be significant. With the updated and increased acreages of mitigation, we continue to believe these impacts would not be significant.").

(B) Cameron LNG and Cameron Interstate's July 23, 2014, and August 13, 2014 filings are dismissed as moot.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.