

157 FERC ¶ 61,149
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

Magnolia LNG, LLC
Kinder Morgan Louisiana Pipeline LLC

Docket Nos. CP14-347-001
CP14-511-001

ORDER DENYING REHEARING

(Issued November 23, 2016)

1. In an April 15, 2016 order,¹ the Commission granted: (1) Magnolia LNG, LLC (Magnolia) authority under Natural Gas Act (NGA) section 3 to site, construct, and operate new facilities (Magnolia LNG Project) at a proposed liquefied natural gas (LNG) terminal in Calcasieu Parish, Louisiana for the liquefaction and export of natural gas; and (2) Kinder Morgan Louisiana Pipeline LLC (Kinder Morgan Louisiana) a certificate of public convenience and necessity under NGA section 7(c) to construct and operate pipeline and compression facilities in Acadia, Calcasieu, and Evangeline Parishes, Louisiana (Lake Charles Expansion Project) for the purpose of supplying the Magnolia LNG Project. On May 16, 2016, Sierra Club filed a request for rehearing, arguing the Commission's environmental review violated the National Environmental Policy Act of 1969 (NEPA),² by inadequately evaluating the facilities' indirect and cumulative effects. For the reasons discussed below, we deny Sierra Club's request for rehearing.³

I. Background

2. The April 2016 Order authorized Magnolia to site, construct, and operate an LNG terminal and liquefaction facilities near Lake Charles, Calcasieu Parish, Louisiana. These facilities, which were designed to export approximately 8 million metric tons per annum

¹ 155 FERC ¶ 61,033 (2016) (April 2016 Order).

² 42 U.S.C. §§ 4321-4370f (2012).

³ For additional description of the facilities, see April 2016 Order, 155 FERC ¶ 61,033 at PP 4-12.

(MTPA) of natural gas, include two full containment LNG storage tanks; four LNG trains; LNG vessel berthing, mooring, and loading facilities; and LNG truck loading facilities. As explained in the April 2016 Order, the Department of Energy/Office of Fossil Energy (DOE/FE) authorized Magnolia to export up to 8 million MTPA, or 1.4 billion cubic feet per day of LNG to countries with which the United States has a free trade agreement (FTA) requiring national treatment for trade in natural gas.⁴

3. The April 2016 Order also granted Kinder Morgan Louisiana authorization to construct and operate facilities necessary to enable its existing system to transport domestically-produced natural gas in a southerly direction for purposes of supplying Magnolia's proposed liquefaction facilities and terminal for export. Previously, the Kinder Morgan Louisiana pipeline could only transport natural gas in a northerly direction away from the Magnolia project site.

4. The Commission's environmental review of the Magnolia LNG Project and Lake Charles Expansion Project included the issuance of a draft environmental impact statement (EIS) on July 17, 2015, and a final EIS on November 13, 2015. The April 2016 Order concluded that the Magnolia LNG Project and the Lake Charles Expansion Project are environmentally acceptable actions if constructed and operated as described in the final EIS and in accordance with the 115 environmental conditions (many with multiple subparts) imposed by the Commission.

5. On rehearing, Sierra Club asserts the Commission too narrowly confined the scope of the NEPA analysis by ignoring indirect effects related to: (1) upstream natural gas production; (2) increased foreign use of natural gas, including greenhouse gas (GHG) emissions and their secondary effects; and (3) domestic gas-to-coal switching. Sierra Club also asserts the cumulative effects analysis was flawed because it lacked analysis of these effects (natural gas production, GHG emissions, and domestic gas-to-coal switching) when combined with effects from other past, present, and reasonably foreseeable LNG export facilities.

⁴ DOE/FE Order 3245 (February 26, 2013); DOE/FE Order 3406 (March 5, 2014). Magnolia's request for authorization to export volumes to non-FTA countries, which is not additive to the previously granted authorizations, is pending before DOE/FE in Docket No. 13-132-LNG.

II. Procedural Matters

6. Magnolia filed a motion requesting leave to file an answer to Sierra Club's rehearing request. Rule 713(d) of the Commission's Rules of Practice and Procedure prohibits answers to the rehearing request.⁵ Accordingly, we reject Magnolia's answer.

III. Analysis

A. Indirect Effects

7. The Council on Environmental Quality's (CEQ) NEPA regulations define indirect impacts as those that are "caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable."⁶ 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."⁷

8. The April 2016 Order concluded that the environmental effects resulting from the export of LNG as a commodity, i.e., effects related to induced upstream production, gas-to-coal-switching, and foreign end use of natural gas, are neither caused by the Commission's approval of Magnolia's LNG facilities, nor reasonably foreseeable consequences of the Commission's approval of these facilities.⁸

9. The United States Court of Appeals for the District of Columbia Circuit recently examined the Commission's NEPA responsibility to study indirect effects relating to the export of natural gas when exercising its NGA section 3 responsibilities.⁹ In *Freeport*,

⁵ 18 C.F.R. § 385.713(d)(1) (2016).

⁶ 40 C.F.R. § 1508.8(b) (2016).

⁷ *Sierra Club v. Marsh*, 976 F.2d 763, 767 (1st Cir. 1992). See also *City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005) (*Shoreacres*).

⁸ April 2016 Order, 155 FERC ¶ 61,033 at PP 90-95, 114. See also *Trunkline Gas Co., LLC*, 155 FERC ¶ 61,328, at PP 6-20 (2016) (*Trunkline*) (addressing substantially identical arguments raised by Sierra Club with respect to the Lake Charles LNG project).

⁹ See *Freeport LNG Development, L.P.*, 148 FERC ¶ 61,076, *reh'g denied*, 149 FERC ¶ 61,119 (2014), *aff'd sub nom. Sierra Club and Galveston Baykeeper v. FERC*, 827 F.3d 36 (D.C. Cir. 2016) (*Freeport*); *Sabine Pass Liquefaction, LLC*, 146 FERC ¶ 61,117, *reh'g denied*, 148 FERC ¶ 61,200 (2014), *aff'd sub nom. Sierra Club v. FERC*, 827 F.3d 59 (D.C. Cir. 2016) (*Sabine Pass*); and *Dominion Cove Point LNG, LP*,

the D.C. Circuit explained that NEPA requires a reasonably close causal relationship between a project and its potential effects and thus the Commission need not “examine everything for which the Projects could conceivably be a but-for cause.”¹⁰ The court further found that the “Commission’s NEPA analysis did not have to address the indirect effects of the anticipated export of natural gas” “because the Department of Energy, not the Commission, has sole authority to license the export of any natural gas going through the Freeport facilities.”¹¹ The court explained that “[i]n the specific circumstances where, as here, an agency ‘has no ability to prevent a certain effect due to’ that agency’s ‘limited statutory authority over the relevant action[],’ then that action ‘cannot be considered a legally relevant “cause” of the effect’ for NEPA purposes.”¹² The D.C. Circuit reached a similar result in both *Sabine Pass*¹³ and *EarthReports*.¹⁴

148 FERC ¶ 61,244 (2014), *reh’g denied*, 151 FERC ¶ 61,095 (2015), *aff’d sub nom. EarthReports, Inc. v. FERC*, 828 F.3d 949 (D.C. Cir. 2016) (*EarthReports*).

¹⁰ *Freeport*, 827 F.3d at 46.

¹¹ *Id.* at 47.

¹² *Id.* See also *id.* at 48 (“The Department’s independent decision to allow exports—a decision over which the Commission has no regulatory authority—breaks the NEPA causal chain and absolves the Commission of responsibility to include in its NEPA analysis considerations that it ‘could not act on’ and for which it cannot be ‘the legally relevant cause.’”) (quoting *Dept. of Transp. v. Public Citizen*, 541 U.S. 752, 769 (2004) (*Public Citizen*)); *id.* 49 (“The Supreme Court’s decision in *Public Citizen* is explicit that the Commission was not obligated to consider those effects of the Freeport Projects that could only occur after intervening action by the Department of Energy or Congress and that only those actors—and not the Commission—had the authority to prevent.”).

¹³ *Sabine Pass*, 827 F.3d at 68 (“The challenged Commission orders therefore are not the legally relevant cause of the indirect effects [induced production and gas-to-coal switching] Sierra Club raises.”).

¹⁴ *EarthReports* extended the analysis in *Freeport* and *Sabine Pass* to address similar arguments with respect to the end use of the exported natural gas. *EarthReports*, 828 F.3d at 956 (“And while [*Freeport* and *Sabine Pass*] did not address whether NEPA reaches the effects of emissions arising from the transport and consumption of exported natural gas, this indirect effect similarly ‘cannot occur unless a greater volume of [LNG] is shipped from [Cove Point] and enters the international marketplace.’”) (quoting *Sabine*

10. Accordingly, we reaffirm that effects related to induced natural gas production, gas-to-coal switching, and foreign consumption of natural gas are not causally related to the Commission's approval of the Magnolia facilities.

11. As explained in the April 2016 Order and final EIS,¹⁵ these effects, even if causally related, are not reasonably foreseeable. The statements and reports cited by Sierra Club are broad generic reports that do not show where or when additional development will occur. Such broad analyses, based on generalized assumptions rather than reasonably specific information, will not yield information that would provide meaningful assistance to the Commission in its decision making, e.g., evaluating potential alternatives to the specific proposal before it.¹⁶

12. Information specifically linking the effects from natural gas production to the Magnolia LNG Project and Lake Charles Expansion Project is lacking because the relationship between the Commission's approval of these facilities and the impacts Sierra Club raises is too attenuated. For example, Sierra Club does not identify information regarding the location, timing, or methods of the additional natural gas production that would be induced by the projects. Additional unknowable factors include potential regulation by local, state, and federal agencies that have the authority to regulate the environmental effects raised by Sierra Club. Without such information, it is

Pass, 827 F.3d at 68).

¹⁵ See Final EIS at 1-11, Table 1.3-2, H-6 (induced production), H-7 (GHG emissions); April 2016 Order, 155 FERC ¶ 61,033 at P 95 (gas-to-coal switching).

¹⁶ The Commission has previously addressed the studies cited by Sierra Club and found them to be unpersuasive. For the reasons cited in previous orders, the Commission finds that the "potential impacts from induced production are not reasonably foreseeable because the Commission can only speculate as to where and when the additional production would occur and the extent and nature of the actual infrastructure (wells, pads, gathering lines, etc.) which would be necessary to support such production." *Sabine Pass Liquefaction Expansion, LLC*, 151 FERC ¶ 61,253, at P 15 (2015) (*Sabine Pass Liquefaction Expansion*). See *id.* P 23 ("The studies set forth general economic projections with respect to LNG exports in the United States but do not assist us in reasonably estimating how much of the Liquefaction Expansion project's export volumes will come from current versus future natural gas production, or where and when the assumed future production may specifically be located and take place, much less in identifying any associated environmental impacts of such production.").

impossible for the Commission to study the particular indirect impacts raised by Sierra Club. Accordingly, Sierra Club's rehearing request is denied.

B. Cumulative Effects

13. A "cumulative impact," as defined by CEQ is the "impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions."¹⁷ "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."¹⁸

14. Sierra Club argues the Commission must consider the effect that the Magnolia project will have together with other past, present, and future LNG export projects throughout the entire nation.¹⁹ Sierra Club maintains that the most effective way to engage in the legally required cumulative effects analysis would be to conduct a programmatic EIS.²⁰

15. In *Freeport*, the D.C. Circuit addressed this same argument raised by Sierra Club, i.e., that the Commission, as part of its cumulative impacts analysis for the Freeport LNG project "should have undertaken a nationwide analysis that included applications for several other liquefied natural gas export terminals that were pending or had already been granted across the United States."²¹ The Court rejected Sierra Club's argument noting that the Commission reasonably identified the relevant geographic area for its cumulative-impact analysis as the county in which Freeport LNG project was located.²²

¹⁷ 40 C.F.R. § 1508.7 (2016).

¹⁸ *Freeport*, 827 F.3d at 50 (quoting *TOMAC, Taxpayers of Michigan Against Casinos v. Norton*, 433 F.3d 852, 864 (D.C. Cir. 2006) and *Grand Canyon Trust v. FAA*, 290 F.3d 339, 345 (D.C. Cir 2002). *See also Sierra Club v. FERC*, No. 15-1133 (D.C. Cir. Nov. 4, 2016).

¹⁹ Rehearing Request at 15-16.

²⁰ *Id.* at 16.

²¹ *Freeport*, 827 F.3d at 50.

²² *Id.* at 50.

Further, the Court held that a nation-wide cumulative analysis would “draw[] the NEPA circle too wide. . . .”²³

16. As in *Freeport*, Sierra Club’s argument would result in defining the project area for the Magnolia LNG Project and the Lake Charles Expansion Project as not where the facilities are located (Calcasieu, Acadia and Evangeline Parishes, Louisiana), but rather the entire United States. Further, as in *Freeport*, Sierra Club presents no evidence that other LNG projects – as far removed as Maryland (Dominion Cove Point LNG), or Alaska – will impact the same environmental resources as the Magnolia LNG Project or conversely that the Magnolia Project has any reasonably foreseeable effects outside of the project area much less nationally.²⁴ As the Commission has explained, it is not required to analyze the “cumulative effects of an action on the universe.”²⁵

17. Moreover, as previously explained, there is no Commission program or policy to promote additional production or export of, or increased reliance on, natural gas.²⁶ Nor is there any need for the Commission to review groups of LNG export proposals together. The Commission’s practice is to consider each LNG export project application on its own merits. The Magnolia LNG Project and the Lake Charles Expansion Project are not in response to “broad Federal actions such as the adoption of new agency programs or regulations” that might require preparation of a programmatic EIS.²⁷ Accordingly, Sierra Club’s request for rehearing is denied.

²³ *Id.*

²⁴ *Id.*

²⁵ *Freeport LNG Development, L.P.*, 149 FERC ¶ 61,119 at P 33 (citing CEQ Guidance, Considering Cumulative Effects Under the National Environmental Policy Act (Jan. 1997)).

²⁶ *See, e.g., Corpus Christi Liquefaction, LLC*, 151 FERC ¶ 61,098, at PP 24-31 (2015); *Cameron LNG, LLC*, 147 FERC ¶ 61,230, at PP 70-72 (2014).

²⁷ 40 C.F.R. § 1502.4(b) (2016). *See also Trunkline*, 155 FERC ¶ 61,328 at PP 25-27 (addressing substantially identical arguments raised by Sierra Club with respect to the Lake Charles LNG project).

The Commission orders:

The Commission hereby denies Sierra Club's rehearing request as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.