

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

	)	
SIERRA CLUB AND	)	
GALVESTON BAYKEEPER	)	
	)	
Petitioners,	)	
	)	
v.	)	No. 14-1275
	)	
FEDERAL ENERGY	)	
REGULATORY COMMISSION,	)	
	)	
Respondent.	)	
	)	
_____	)	

**PETITIONERS’ NON-BINDING STATEMENT  
OF ISSUES TO BE RAISED**

Pursuant to the Court’s December 12, 2014 Order in this matter, Petitioners Sierra Club and Galveston Baykeeper submit this Non-Binding Statement of Issues to be Raised. Petitioners challenge (1) the Order of the Federal Energy Regulatory Commission (“Commission”) entered on July 30, 2014 at 148 FERC ¶ 61,076 and titled “Order Granting Authorizations under Section 3 of the Natural Gas Act”; and (2) the Commission’s denial of Petitioners’ request for rehearing of this order, entered on November 13, 2014 at 149 FERC ¶ 61,119 and titled “Order Denying Rehearing and

Clarification” (collectively “Orders”). The issues raised by this challenge include, but are not limited to:

1. Whether the Commission erred in concluding that the effects of the Freeport LNG project (“Project”) on induced gas production were outside the scope of the National Environmental Policy Act (“NEPA”) indirect and cumulative effects analyses. *Mid States Coalition for Progress v. Surface Transportation Board*, 345 F.3d 520, 545-51 (8th Cir. 2003); *Scientists’ Inst. for Pub. Info., Inc. v. Atomic Energy Comm’n*, 481 F.2d 1079 (D.C. Cir. 1973); 40 C.F.R. § 1508.8(b).
2. Whether the Commission erred in refusing to consider the effects of the Project on domestic electric sector air emissions, including emissions resulting from shifting electricity generation from gas to coal. *Scientists’ Inst. For Pub. Info.*, 481 F.2d 1079; 40 C.F.R. § 1508.8(b).
3. Whether the Commission violated NEPA by assuming that if the no action alternative is selected, other projects may take its place and cause comparable environmental impacts. 40 C.F.R. § 1502.14(d).
4. Whether the Commission violated NEPA by failing to take a hard look at the Project’s air pollution impacts, including by:

- a. Failing to ensure the scientific integrity of the data used by using an outdated and superseded estimate of methane's global warming impacts. 40 C.F.R. § 1502.24.
  - b. Violating the obligation to consider indirect impacts and compare impacts against a no action alternative by discussing indirect impacts of electricity consumption only by comparison to emissions from a design using on-site gas turbines. 40 C.F.R. §§ 1502.14(d), 1508.8(b).
  - c. Improperly dismissing the alternative of requiring capture and sequestration of carbon emissions from amine units by relying on facts not applicable to this design, violating NEPA's obligation to take a hard look at reasonable alternatives. 40 C.F.R. § 1502.14.
5. Whether the Commission violated the Clean Air Act by authorizing the Project prior to completion of the general conformity analysis, and by failing to clearly prohibit increases in vessel traffic beyond the levels considered in the conformity analysis prior to further explicit Commission authorization. 40 C.F.R. § 93.150.
6. Whether the Commission violated NEPA and the Clean Air Act by assessing the environmental impacts of vessel traffic relative to a baseline that included previously authorized ship calls that have not occurred and are not likely to occur absent the pending export Projects. *Custer Cty. Action*

*Ass'n v. Garvey*, 256 F.3d 1024 (10th Cir. 2001); 40 C.F.R. §§ 93.150, 93.152.

7. Whether the Commission violated NEPA by failing to take a hard look at the risk of a vessel fire affecting nearby industrial facilities.

*Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989).

8. Whether the Commission violated NEPA, the Natural Gas Act, and the Administrative Procedure Act by basing the Commission's review on the belief that the Department of Energy ("DOE") has already determined that exporting 1.8 bcf/d of natural gas was consistent with the public interest, whereas DOE has not yet assessed the environmental impacts of these exports or reached a final determination of the public interest. DOE/FE Orders 3282, 3357.

Respectfully submitted on January 12, 2015.

By:  /s/ Deborah A. Sivas  
Deborah Sivas (Cal. Bar. No. 135446)  
Alicia E. Thesing (Cal. Bar No. 211751)  
Matthew J. Sanders (Cal. Bar No. 222757)  
ENVIRONMENTAL LAW CLINIC  
Mills Legal Clinic at Stanford Law School  
559 Nathan Abbott Way  
Stanford, California 94305  
Telephone: (650) 723-0325  
Email: [dsivas@stanford.edu](mailto:dsivas@stanford.edu)

Michael Robinson-Dorn (Cal. Bar No. 159507)  
Environmental Law Clinic  
University of California, Irvine School of Law

401 E. Peltason Drive, Suite 4500  
P.O. Box 5479  
Irvine, California 92616-5479  
Telephone: (949) 824-1043  
Email: [mrobinson-dorn@law.uci.edu](mailto:mrobinson-dorn@law.uci.edu)

Nathan Matthews (Cal. Bar. No. 264248)  
Sierra Club Environmental Law Program  
85 Second St., 2d Fl.  
San Francisco, California 94105  
Telephone: (415) 977-5695  
Email: [nathan.matthews@sierraclub.org](mailto:nathan.matthews@sierraclub.org)

Attorneys for Petitioners SIERRA CLUB and  
GALVESTON BAYKEEPER

**CERTIFICATE OF SERVICE**

I, Natalie Spiegel, hereby certify under the penalty of perjury that on January 12, 2015, I filed the original of Petitioners' Non-Binding Statement of Issues to be Raised via the Court's CM/ECF system, thereby causing an electronic copy to be served on all parties registered to receive notices in this case via electronic noticing.

January 12, 2015.

/s/ Natalie Spiegel  
Natalie Spiegel