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UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

Freeport LNG Expansion, LP FLNG Liquefaction, LLC	)))	FE Docket No. 10-161-LNG

MOTION FOR LEAVE TO INTERVENE AND PROTEST OF THE AMERICAN PUBLIC GAS ASSOCIATION

Pursuant to Sections 590.303 and 590.304 of the Administrative Procedures with Respect to the Import and Export of Natural Gas,[1] the American Public Gas Association ("APGA") files this motion to intervene and protest in the above captioned proceeding. In support, APGA states the following:

I. COMMUNICATIONS

Any communications regarding this pleading or this proceeding should be addressed to:

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[1] 10 C.F. R. §§ 590.303, 590.304 (2010).

II. INTERVENTION

APGA is the national, non-profit association of publicly-owned natural gas distribution systems, with over 700 members in 36 states. Overall, there are some 950 publicly-owned systems in the United States. Publicly-owned gas systems are not-for-profit retail distribution entities that are owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that have natural gas distribution facilities. APGA members purchase interstate natural gas transportation services, usually as captive customers of a single interstate pipeline, at rates and under terms and conditions that are regulated by the Federal Energy Regulatory Commission ("FERC"). APGA's members are active participants in the domestic market for natural gas where they secure the supplies of natural gas to serve their end users.

On December 17, 2010, Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC (collectively, "FLEX") filed an application in this proceeding for long-term, multi-contract authorization to export approximately 9 million metric tons per annum ("mtpa") of domestically produced liquefied natural gas ("LNG") by vessel. FLEX seeks authorization to export LNG from the existing Freeport Terminal on Quintana Island, Texas to any country with which the United States does not have a Free Trade Agreement requiring the national treatment for trade in natural gas and LNG, that has or in the future develops the capacity to import LNG, and with which trade is not prohibited by U.S. law or policy. FLEX requests this authorization for a 25-year term commencing the earlier of the date of first export or five years from the date of issuance of the authorization requested.

APGA has a direct and substantial interest in this proceeding that cannot be adequately represented by any other party. APGA respectfully submits that good cause exists to grant its motion to intervene.

III. PROTEST

The development of technology in recent years permitting the recovery of natural gas reserves from domestic shale deposits has altered the energy landscape and provides the United States with the ability and opportunity to realistically pursue energy independence. If America makes wise policy choices, this domestically-available and low carbon emission fuel will be available to satisfy U.S. energy needs and to greatly diminish our longstanding and dangerous reliance on imported petroleum products. Exportation of significant quantities of domestic natural gas, on the other hand, would have significant adverse implications for domestic consumers of natural gas, for U.S. energy supply, and for national security. Therefore, FLEX's request for authority to export domestically produced LNG is inconsistent with the public interest and should be denied.

Background

FLEX's application in the instant proceeding[2] represents one of the first opportunities for the DOE/FE to exercise its policymaking discretion regarding the export of a significant quantity of domestically produced natural gas from the lower 48 states as LNG.[3] FLEX requested authority to export up to 9 million mtpa of domestically sourced LNG for 25 years, equaling 225 million metric tons over the course of the authorization.

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[2] *Freeport LNG Expansion, L.P*, FE Docket No. 10-161-LNG, Application (Dec. 17, 2010) ("Application").

[3] There is also a pending LNG export application in *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG.

The DOE/FE recently granted FLEX long-term, multi-contract authority to export this quantity of LNG to any nation that has, or develops, the capacity to import LNG and with which the United States has, or enters into, a Free Trade Agreement requiring national treatment for trade in natural gas ("FTA Nations").[4] The DOE/FE granted this authority pursuant to NGA section 3(c), which provides that applications to export shall be "deemed to be consistent with the public interest" and must be "granted without modification or delay."[5] Pursuant to this mandate, the DOE/FE did not have discretion to consider the implications of granting export authority to FLEX and stated that its order granting the request "should not be read to indicate DOE's views" regarding the policy arguments raised in FLEX's application.[6]

Despite this earlier, automatic grant of authority, the DOE/FE has a duty to ensure that the application before it in the instant proceeding for broader export authority is not inconsistent with the public interest pursuant to NGA section 3(a).[7] APGA respectfully submits that FLEX's proposal to export domestically produced LNG to non-FTA Nations is inconsistent with the public interest because it will allow exporters to squander America's best opportunity to foster energy independence, jeopardizing national security and increasing consumer prices for natural gas. Although the instant proceeding concerns the same volume of export capacity as previously authorized in Order No. 2913, the requested export authority is significantly broader,

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4 *Freeport LNG Expansion, L.P*, FE Docket No. 10-160-LNG, Order No. 2913 (Feb. 10, 2011). Currently, the FTA Nations are Canada, Mexico, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Chile, Peru, Morocco, Oman, Jordan, Bahrain, Australia, and Singapore.

5 15 U.S.C. § 717b(c) (2010).

6 Order No. 2913, at 6.

7 15 U.S.C. § 717b(a) (2010).

and DOE/FE still retains the ability to prevent significant adverse consequences to the domestic market for natural gas.

Energy Independence

The United States now has a previously unimaginable opportunity to seek to achieve energy independence (a goal that has been oft-stated by past administrations but never seriously pursued) with secure and affordable supplies of domestic natural gas. As President Obama poignantly observed:

> Now America has arrived at a crossroads. Embedded in American soil and the wind and the sun, we have the resources to change. Our scientists, businesses and workers have the capacity to move us forward. It falls on us to choose whether to risk the peril that comes with our current course or to seize the promise of energy independence. For the sake of our security, our economy and our planet, we must have the courage and commitment to change.[8]

Instead of exporting domestic natural gas, the United States should maximize its use domestically in order to displace the current reliance on imported petroleum products and on carbon-intensive coal. For instance, domestic natural gas should play a much larger role as a transportation fuel. Currently, the U.S. imports billions of dollars worth of oil from around the globe, a great deal of which is used for gasoline to fuel vehicles. The replacement of current gasoline-powered fleets with natural gas vehicles (and support infrastructure) would significantly reduce U.S. dependence on foreign oil, and thereby enhance U.S. security and strategic interests and reduce our trade deficit.

Exporting domestically produced LNG will tie U.S. natural gas prices to international markets that oftentimes have higher and less stable natural gas commodity prices. As FLEX

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[8] Remarks by the President on Jobs, Energy Independence and Climate Change, at the East Room of the White House (January 26, 2009), available at http://www.whitehouse.gov/blog_post/Fromperiltoprogress/.

states in its application, U.S. natural gas prices "are among the lowest in the developed world."[9] In Europe and Asia, however, natural gas markets are less liquid and prices are higher and often indexed to crude oil. FLEX suggests that the introduction of U.S.-produced LNG will help European and Asian markets become more liquid and less sensitive to fluctuations in the price of oil. That thesis is not tenable as the amount of natural gas proposed to be exported from the U.S., while significant on the domestic scale, would be a proverbial "drop in the bucket" compared to the global natural gas markets and would have little effect in changing those markets, which are often less transparent and less competitive, divided by national boundaries, and regularly indexed to crude oil. It seems far more likely that exporting natural gas from the United States would tie domestic commodity prices to international fluctuations rather than tame international fluctuations.

As FLEX states in its application, nearly half of the natural gas imported by European Union nations is delivered via pipelines from Russia and North Africa.[10] For example, Italy depends on a trans-Mediterranean pipeline from Libya, its former colony, for 10% of its natural gas needs. [11]

It is unrealistic to think that U.S. LNG exports could significantly dampen the impact of current events in Libya on Italian energy markets, let alone broader European or global markets. Meanwhile, exports would tie U.S. natural gas prices to prices and demand abroad, to the detriment of the U.S. consumer.

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9 Application at 14.

10 Application at 34.

11 Rachel Donadio, *Italian Energy Company Suspends Gas Pipeline to Libya*, N.Y. Times Online (Feb. 23, 2011); *see also* Stephan Faris, *Italy's Bad Romance: How Berlusconi Went Gaga for Gaddafi*, Time Magazine Online (Feb. 24, 2011) (Italy depends on Libya for roughly a third of its energy consumption).

FLEX suggests that the U.S. should foster a global market for natural gas through exports,[12] but ignores the fact that the current domestic natural gas market is competitive, liquid and transparent while simultaneously less susceptible to unstable regimes, rapacious cartels, and distant events than the global oil market.[13] At present, the U.S. natural gas market benefits from the security and political stability in North America. United States policymakers should preserve rather than undermine the stability of domestic commodity markets while at the same time adopting policies that expand domestic demand.

In addition to tying U.S. natural gas prices to international volatility, LNG exports would inflate demand and prices by forcing U.S. consumers to compete with end-users in other nations that are required to pay more for natural gas. This would incontrovertibly increase the price for natural gas in the domestic market. The DOE/FE should not pursue policies that directly increase natural gas commodity prices for American consumers, thereby making natural gas less competitive in this country as a replacement fuel for less clean, higher carbon-content fuels.

The U.S. should foster domestic demand and put seemingly abundant natural gas resources to work weaning the country off of gasoline for vehicles and carbon-intensive coal for electric generation. Relatively low prices make natural gas viable as a transportation fuel and

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[12] Application at 34. FLEX cites a study produced by the Massachusetts Institute of Technology ("MIT"), MIT Energy Initiative, MIT, *The Future of Natural Gas* (2010), for the proposition that the U.S. should pursue policies that liberalize global natural gas markets. The MIT Study cited by FLEX, however, does not address LNG exports. The MIT Study advocates sharing unconventional extraction techniques, encouraging foreign subsidy reductions, the inclusion of emerging natural gas markets in the International Energy Agency process, and other measures to foster the global market for natural gas, because "the U.S. could become a substantial net importer of LNG in future decades." MIT Study at xvii. The fact that the MIT study concludes that the U.S. could still become a substantial net importer of LNG, despite taking into account recent unconventional gas development, highlights the risk inherent in assuming that domestic unconventional gas supplies can be recovered in an economical and politically acceptable manner. The MIT Study also highlights other measure U.S. policymakers could pursue in order to foster global natural gas markets.

[13] *See* IFandP Newsroom, *Commodities: Oil Price Volatility Up On Libya Rumours, US Natural Gas Continues its Slide*, Industrial Fuels and Power Online (March 3, 2011) (reporting on rising prices and volatility in the international market for crude oil and unperturbed, declining prices for domestic natural gas).

competitive against coal. Furthermore, the Department of Energy owes a duty to the American people to ensure that U.S. energy markets function efficiently, not a duty to try to invigorate a global market for natural gas by encouraging exports of domestically produced gas. The "public interest analysis of export applications" should be "focused on *domestic* need for natural gas," threats to *domestic* supply, and "other factors to the extent they are shown to be relevant."[14]

The United States cannot afford to squander the opportunity, now available to it due to increased supplies of domestic natural gas, to meaningfully pursue energy independence. Dependence on foreign fuels threatens national security and undermines our ability to respond effectively to turmoil in oil producing regions of the world. The U.S. should pursue policies aimed at keeping domestic gas prices in line with domestic demand, relatively stable and less susceptible to international events by preventing substantial exports of domestically produced natural gas.

Domestic Supply

Domestic unconventional gas supplies offer an opportunity for the U.S. to pursue greater energy independence, but at the same time, policy makers should proceed cautiously and not inflate the amount of natural gas that can be recovered in an economical and politically acceptable manner. FLEX, however, fails to account for the uncertainty that still shadows projections of an exponential increase in recoverable domestic supplies. Environmental and regulatory issues and local opposition hamper fracking operations and shale gas production. [15]

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14 *Sabine Pass Liquefaction, LLC*, Opinion and Order Denying Request for Review Under Section 3(c) of the Natural Gas Act, October 21, 2010, FE Docket No. 10-111-LNG.

15 The newspapers are replete with articles chronicling the uncertain future of shale gas exploration. *See, e.g.,* Ian Urbina, *Regulation Lax as Gas Wells' Tainted Water Hits Rivers*, N.Y. Times Online (Feb. 26, 2011); Ian Urbina, *Wastewater Recycling No Cure-All in Gas Process*, N.Y. Times Online (March 2, 2011); Ian Urbina,

Safety and environmental concerns and moratoria hinder offshore production. Given these risks, it is still uncertain whether significantly increasing quantities of natural gas from shale and from offshore will happen.

The history of the fossil fuels industry is replete with miscalculations regarding supplies. For instance, not too long ago FLEX predicted that the U.S. natural gas market would benefit significantly from the *import* of LNG.[16] Not to pick on FLEX, but the last time it speculated on the future of the country's natural gas supply, things did not pan out (as most vividly illustrated by the subject application). Conversely, the nation's first LNG export facility in Kenai, Alaska is slated to terminate exports sooner than expected because drilling activity in Alaska's Cook Inlet has not offset declines in production rates, making it unfeasible to continue LNG exports.[17]

If the U.S. has vast reserves of recoverable natural gas, policymakers should seize the opportunity to foster energy independence. If the U.S. has less recoverable gas than projected, it certainly should not exacerbate the situation by approving export applications premised on a domestic over-supply. Additionally, lower than projected amounts of recoverable gas would worsen exponentially the risks inherent in tying U.S. natural gas prices to volatile international markets.

Alternatives to Export

United States policymakers, including DOE/FE, should aggressively pursue an energy policy that focuses on the need to foster meaningful energy independence in the shortest time

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Pressure Limits Efforts to Police Drilling for Gas, N.Y. Times Online (March 4, 2011); Darryl Fears, *Sitting Atop Huge Gas Reserve, Md. Debates Drilling Practice*, Washington Post Online (March 28, 2011).

16 *See Freeport LNG Development, L.P.*, FE Docket No. 07-136-LNG, Order No. 2457 (Jan. 15, 2008).

17 Isabel Ordonez, *Conoco to Stop LNG Exports from Kenai Plant in Alaska*, Wall Street Journal Online (Feb. 10, 2011).

frame possible by, among other steps, increasing the current and long-term availability of natural gas through the environmentally-sound development of natural gas reserves from shale and from offshore deposits, as well as from methane hydrates. Regarding the demand side of the equation, United States policymakers should encourage the use of natural gas as low carbon, efficient and geopolitically viable energy source for use in this country. Policymakers should foster the use of natural gas as a replacement transportation fuel for gasoline and should encourage the direct use of natural gas for residential and commercial end uses such as space heating, water heating, and the like where the greater efficiency and lower emissions of natural gas (on a source to site basis) has been amply demonstrated.[18] U.S. policymakers should encourage the use of natural gas for distributed and other power generation to decrease reliance on coal and complement clean, albeit intermittent, energy sources such as wind and solar. APGA observes that most electric generation being built since 2000 is fueled with natural gas, which has obvious significance for the demand for natural gas in the immediate and long-term future. Finally, APGA observes that increased use of natural gas domestically in lieu of oil imports will benefit the U.S. economy by reducing our trade deficit.

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18 *Review of Site (Point-of-Use) and Full-Fuel-Cycle Measurement Approaches to DOE/EERE Building Appliance and Energy Efficiency Standards*, National Academies of Sciences (May 27, 2009) available at http://www.nap.edu/catalog.php?record_id=12670.

IV. CONCLUSION

WHEREFORE, based on the foregoing, APGA respectfully requests that the DOE/FE (1) grant its motion to intervene in this proceeding with all rights appurtenant to that status, and (2) deny, as inconsistent with the public interest, FLEX's application for additional export authority.

Respectfully submitted,

AMERICAN PUBLIC GAS ASSOCIATION

By Will T. Miller

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Its Attorneys

March 28, 2011

UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

Freeport LNG Expansion, LP FLNG Liquefaction, LLC	)))	FE Docket No. 10-161-LNG

CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE

Pursuant to C.F.R. § 590.103(b) (2010), I, William T. Miller, hereby certify that I am a duly authorized representative of the American Public Gas Association, and that I am authorized to sign and file with the Department of Energy, Office of Fossil Energy, on behalf of the American Public Gas Association, the foregoing document and in the above-captioned proceeding.

Dated at Washington, D.C., this 28th day of March, 2011.

Will T. Miller

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VERIFICATION

WASHINGTON	§
	§
DISTRICT OF COLUMBIA	§

Pursuant to C.F.R. § 590.103(b) (2010), William T. Miller, being duly sworn, affirms that he is authorized to execute this verification, that he has read the foregoing document, and that all facts stated herein are true and correct to the best of his knowledge, information, and belief.

Will T. Miller

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Subscribed and sworn to before me this 28th day of March, 2011.

Leslie K. Nelson-Walski
Notary Public
My Commission Expires: LESLIE K. NELSON-WALSKI Notary Public, District of Columbia My Commission Expires May 31, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon on the applicant and on DOE/FE for inclusion in the FE docket in the proceeding in accordance with 10 C.F.R. § 590.107(b).

Dated at Washington, D.C., this 28th day of March.

By: ____________________

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