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April 12, 2011

VIA COURIER

Mr. John Anderson
Office of Fossil Energy [FE-34]
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585

RE: In the Matter of Freeport LNG Expansion, L.P.
FLNG Liquefaction, LLC
FE Docket No. 10-161-LNG
Answer of Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC to Protest of the American Public Gas Association

Dear Mr. Anderson:

Enclosed for filing on behalf of Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC (collectively, "FLEX"), please find an original and five (5) copies of FLEX's Motion for Leave to Answer and Answer to the Protest filed by the American Public Gas Association in FE Docket No. 10-161-LNG.

In its application, FLEX seeks long-term, multi-contract authorization to engage in exports up to 1.4 billion cubic feet (Bcf) per day, or 511 Bcf per year, of liquefied natural gas ("LNG"). FLEX proposes to export LNG from Quintana Island near Freeport, Texas to any country with which the United States does not have a free trade agreement ("FTA") requiring national treatment for trade in natural gas and LNG, which has or in the future develops the capacity to import LNG via ocean-going carrier, and with which trade is not prohibited by U.S. law or policy.

In its protest, the American Public Gas Association ("APGA") contends that FLEX's application to export LNG is inconsistent with the public interest and should be denied. As shown in this Answer, AGPA's arguments are not supported by any data, the actions it proposes contravene the express policies of our federal government, and the Protest fails to overcome the statutory presumption in favor of granting the FLEX Application.

FLEX respectfully requests that DOE/FE deny APGA's Protest and issue an order pursuant to Section 3(c) of the Natural Gas Act, as amended by Section 201 of the Energy Policy Act of 1992, for long-term, multi-contract authorization to export LNG to non-FTA countries.

Respectfully submitted,

Les Lo Baugh
Attorneys for
Freeport LNG Expansion, L.P.
FLNG Liquefaction, LLC

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

In the Matter of:
FREEPORT LNG EXPANSION, L.P.
FLNG LIQUEFACTION, LLC

Docket No. 10-161 LNG

MOTION FOR LEAVE TO ANSWER AND ANSWER OF FREEPORT LNG EXPANSION, L.P. AND FLNG LIQUEFACTION, LLC TO MOTION FOR LEAVE TO INTERVENE AND PROTEST OF THE AMERICAN PUBLIC GAS ASSOCIATION

Pursuant the Department of Energy's ("DOE") regulations,[1] Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC (collectively, "FLEX") hereby submit this Answer to the American Public Gas Association's ("APGA") Motion for Leave to Intervene and Protest ("Protest") filed on March 28, 2011 in the above-captioned proceeding. In support of this Answer, FLEX respectfully states as follows:

I. PROCEDURAL BACKGROUND

On December 17, 2010, FLEX filed an application with the Department of Energy's ("DOE") Office of Fossil Energy ("FE"), for a long-term, multi-contract authorization to export 1.4 billion cubic feet (Bcf) per day, or 511 Bcf per year,[2] of liquefied natural gas ("LNG") over 25 years from Quintana Island near Freeport, Texas to any country with which the United States does not have a free trade agreement ("FTA") requiring national treatment for trade in natural gas and LNG, which has or in the future develops the capacity to import LNG via ocean-going

[1] 10 C.F.R. § 590.303(e) and 590.304(f) (2010).

carrier, and with which trade is not prohibited by U.S. law or policy (the "FLEX Application"). The FLEX Application was submitted pursuant to Section 3 of the Natural Gas Act ("NGA"),[3] Part 590 of the Regulations of the DOE,[4] and Section 201 of the Energy Policy Act of 1992.[5]

Notice of the FLEX Application was published in the Federal Register on January 27, 2011 and provided, among other things, that comments, protests and motions to intervene be filed with DOE/FE no later than March 28, 2011. The various timely comments and/or motions to intervene were overwhelmingly in favor of DOE/FE's approval of the FLEX Application. They include five letters of support from various state and federal representatives, and ten letters and resolutions of support from state and local business organizations, all of which recognize the significant economic benefit of approving the FLEX Application. APGA, the only entity to file in opposition to the FLEX Application, submitted its Protest on the final day of the comment period.

II. ANSWER TO PROTEST

FLEX submits this Answer in response to APGA's Protest, which contends that the export of domestically produced natural gas as LNG to non-FTA countries is inconsistent with the public interest. In this Answer, FLEX will show that APGA's Protest consists of unsupported speculation about the effect of global oil prices on the domestic price of natural gas and vague notions of "energy independence" predicated on protectionist export restrictions that are inconsistent with the stated policies of the United States. AGPA's arguments are not supported by any data. APGA's Protest fails to overcome the statutory presumption in favor of granting the FLEX Application. APGA's Protest is simply without merit, and should be granted

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[3] 15 U.S.C. § 717b (2010).
[4] 10 C.F.R. § 590 (2010).
[5] Pub. L. No. 102-486, § 201, 106 Stat. 2776. 2866 (1992) (codified as amended at 15 U.S.C. § 717b(c) (2010)).

no weight by the DOE/FE in its deliberations. In reality, FLEX's proposed LNG exports will encourage domestic natural gas production and increase American energy security. Furthermore, FLEX's proposed exports will cause no material increase in domestic natural gas prices.

A. APGA Fails to Show that the FLEX Application is Inconsistent with the Public Interest

The DOE/FE has consistently ruled that Section 3 of the Natural Gas Act[6] creates a rebuttable presumption that proposed exports of natural gas are in the public interest. In evaluating whether the proposed exportation is within the public interest, DOE/FE applies: (1) the principles established by the Policy Guidelines,[7] which promote free and open trade by minimizing federal control and involvement in energy markets; and (2) DOE Delegation Order No. 0204-111, which requires "consideration of the domestic need for the gas to be exported."

In its Protest, APGA claims that the recently increased estimates of recoverable natural gas reserves cited in the FLEX Application fail to account for environmental and regulatory uncertainty surrounding unconventional gas reserves, as well as some local opposition to shale gas production.[8] Local opposition is predictable for even the most environmentally benign energy projects.[9] The technique of hydraulic fracturing has been used to safely stimulate production in oil and gas wells since 1949, and has been performed about 2.5 million times

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[6] 15 U.S.C. §717b. This authority is delegated to the Assistant Secretary for FE pursuant to Redelegation Order No. 00.002.04D (November 6, 2007)

[7] Policy Guidelines and Delegation Orders Relating to the Regulation of Imported Natural Gas, 49 Fed. Reg. 6,684 (Feb. 22, 1984).

[8] *Freeport LNG Expansion, LP and FLNG Liquefaction, LLC,* Motion for Leave to Intervene and Protest of the American Public Gas Association, FE Docket No. 10-1616-LNG, at 8 (March 28, 2011) ("Protest").

[9] Elizabeth Rosenthal, *Green Development? Not in My (Liberal) Backyard*, New York Times (March 12, 2011) *available at* http://www.nytimes.com/2011/03/13/weekinreview/13nimby.html.

worldwide since then.[10] Though the practice is familiar to those living in traditional energy-producing areas, it has spread into regions with no recent history of oil or gas drilling. It is to be expected that new regulations will be required to address local concerns in those areas.

Federal, state and local authorities are working to ensure that shale gas extraction is conducted in an environmentally responsible manner. As President Obama stated in his March 30, 2011 Remarks on America's Energy Security:

> Recent innovations have given us the opportunity to tap large reserves -- perhaps a century's worth of reserves, a hundred years worth of reserves -- in the shale under our feet. But just as is true in terms of us extracting oil from the ground, we've got to make sure that we're extracting natural gas safely, without polluting our water supply. That's why I've asked Secretary Chu, my Energy Secretary, to work with other agencies, the natural gas industry, states, and environmental experts to improve the safety of this process. ... So I ask members of Congress and all the interested parties involved to keep at it, pass a bill that helps us achieve the goal of extracting natural gas in a safe, environmentally sound way.[11]

Thus, the White House is well aware of the opportunities presented by the nation's enormous natural gas reserves, notwithstanding the regulatory challenges that must be met to extract it.

Regardless of how future regulation affects the manner in which domestic natural gas may be recovered, APGA's Protest fails to address the relevant question of whether the gas FLEX proposes to export is needed to meet domestic demand. APGA provides no evidence for its argument that FLEX's proposed exports are required to achieve American energy independence. In contrast, the FLEX Application relied on the independent statistics and analysis

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[10] Carl T. Montgomery and Michael B. Smith, Hydraulic Fracturing: a History of an Enduring Technology, Journal of Petroleum Technology 62(12), 26 (Dec. 2010) *available at* http://www.spe.org/jpt/print/archives/2010/12/10Hydraulic.pdf

[11] President Obama, Remarks by the President on America's Energy Security (March 30, 2011) *available at* http://www.whitehouse.gov/the-press-office/2011/03/30/remarks-president-americas-energy-security

of the U.S. Energy Information Administration ("EIA"), as well as other public and private energy sector research.

In 2010, U.S. shale gas production reached 4.87 Tcf, up from 0.39 Tcf in 2000,[12] and total domestic natural gas production was 21.2 Tcf.[13] The EIA's Early Release Overview of the Annual Energy Outlook 2011 concluded that the U.S. has 827 Tcf of technically recoverable shale gas reserves (more than double its 2010 estimate of 347 Tcf).[14] The FLEX Application soundly demonstrates that the U.S. is now estimated to have between 1,500 and 2,850 Tcf of recoverable reserves, approximately 30% of which are shale gas, and that these reserves are sufficient to meet all domestic demand at current rates for up to the next 125 years.[15] FLEX's proposed Liquefaction Project will require only about 13.7 Tcf[16] of natural gas over its entire 25-year term of requested export authorization, which is less than 1% of total estimated U.S. recoverable reserves - even assuming that no new gas reserves are identified.[17]

APGA requests that the FLEX Application be denied because APGA asserts that the proposed exports may "exacerbate" a hypothetical future situation in which recoverable supplies are smaller than projected by the most credible experts.[18] APGA fails to provide any data to support its contention that FLEX's proposed exports are needed to meet domestic demand, or that the FLEX Application is in anyway inconsistent with the public interest.

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[12] U.S. ENERGY INFORMATION ADMINISTRATION, SHALE GAS IS A GLOBAL PHENOMENON (Apr. 5, 2011) *available at* http://eia.doe.gov/todayinenergy/detail.cfm?id=811
[13] U.S. ENERGY INFORMATION ADMINISTRATION, ANNUAL ENERGY OUTLOOK 2011 EARLY RELEASE OVERVIEW, Reference Case Table 13 (2010) *available at* http://www.eia.gov/forecasts/aeo/tables_ref.cfm
[14] U.S. ENERGY INFORMATION ADMINISTRATION, ANNUAL ENERGY OUTLOOK 2011 EARLY RELEASE OVERVIEW, Executive Summary (2010), *available at* http://www.eia.doe.gov/forecasts/aeo/executive_summary.cfm.
[15] Mean domestic natural gas reserves, including both Alaska and the Lower 48, are estimated to total about 2,100 Tcf, which is about 92 times the annual U.S. consumption of 22.8 Tcf in 2009. Estimates of domestic shale gas reserves range from 420 to 870 Tcf, with a mean of 615 Tcf. MIT ENERGY INITIATIVE, INTERIM REPORT ON THE FUTURE OF NATURAL GAS 9, 11 (2010).
[16] 13.7 Tcf represents the total of 1.5 Bcf/d over 25 years.
[17] Based on reported estimates of remaining recoverable gas resources which currently range between 1,500 and almost 2,850 Tcf. MIT REPORT, *supra* note 12, at 9 (2010).
[18] Protest, supra note 8 at 9.

B. APGA Suggests Protectionist and Market-Distorting Actions Inconsistent with U.S. Policy

As mentioned above, the DOE/FE applies the principles established by the Policy Guidelines, which promote free and open trade by minimizing federal control and involvement in energy markets. It is the established policy of the United States that free and open trade is in the interest of the American people. As stated in the President's 2011 Trade Policy Agenda, "[t]o reach our full potential for employment and economic growth, America must engage globally to sell more goods and services abroad."[19] As discussed in the FLEX Application, total direct expenditure for the Liquefaction Project will exceed $2 billion, directly creating over 1,000 on-site design and construction jobs. Indirect investment related to the Project is expected to provide a total economic benefit of $3.6 to $5.2 billion.[20]

The federal government expressly promotes increased exports. Granting the FLEX Application to export LNG is consistent with this goal. On March 11, 2010, the President created the National Export Initiative ("NEI") to "enhance and coordinate Federal efforts to facilitate the creation of jobs in the United States through the promotion of exports."[21] Underpinning this policy is the fact that "[a] critical component of stimulating economic growth in the United States is ensuring that U.S. businesses can actively participate in international markets by increasing their exports."[22] Exports, the NEI explains, "create good high-paying jobs." As discussed in the FLEX Application, direct investment in the design and construction of the Liquefaction Project, combined with the indirect investment in natural gas production

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[19] Office of the United States Trade Representative, 2011 Trade Policy Agenda and 2010 Annual Report of the President of the United States on the Trade Agreements Program (March 2011), *available at* http://www.ustr.gov/2011_trade_policy_agenda

[20] FLEX Application at 26-27.

[21] National Export Initiative, Exec. Order 13,534, 75 C.F.R. 12433 (March 16, 2010); *available at* http://edocket.access.gpo.gov/2010/pdf/2010-5837.pdf.

[22] *Id.*

necessary to meet the 1.5 Bcf/d of incremental demand generated by the Project, will generate an estimated 17,000 to 21,000 permanent new American jobs.[23]

Despite its recognition that the DOE does not, as a matter of policy, interfere with energy markets, APGA contends that DOE/FE should now contravene national policy and interfere with energy markets by denying the FLEX Application. APGA suggests that linking domestic and foreign energy markets will lead to increased domestic natural gas prices, but fails to consider how U.S. engagement with global markets can benefit domestic consumers. For example, projected domestic natural gas supply constraints led to the development of terminals to import foreign-source LNG. As a result, APGA's own members have likely benefited from the efforts of FLEX and other LNG terminal operators, whose ability to import LNG cargoes has reduced prices and volatility.

AGPA claims that exports may increase the price of natural gas in the U.S., making it less competitive as a replacement fuel for more carbon-intensive fossil fuels.[24] It asks that DOE/FE prohibit FLEX's proposed LNG exports in order to promote natural gas as a substitute for coal in power generation and as a replacement for imported petroleum by replacing existing gasoline-powered vehicles with natural gas vehicles ("NGVs"). APGA provides zero evidence that that FLEX's proposed exports would deprive the U.S. of gas needed to convert from coal to gas-fired power plants, or to fuel hypothetical fleets of NGVs. The EIA's Early Release Overview of the Annual Energy Outlook 2011 projected that the use of compressed natural gas for transportation will increase 7.3% annually through 2035, up from just 1.2% in its 2010

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[23] FLEX Application at 28.
[24] Protest, at 7.

forecast – yet there will still be surplus natural gas supplies.[25] Domestic natural gas supplies are more than adequate to supply FLEX's proposed exports while meeting all existing demand, and any realistic projected future demand, associated with transportation and electric power generation.

In its Protest, APGA states that: "[DOE] 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."[26] Contrary to APGA's assertions, encouraging global demand for natural gas is the express policy of the United States an essential element of America's plan for energy security. As stated in the President's Blueprint for a Secure Energy Future, "[i]ncreasing the liquidity of global gas markets can play an important role in ensuring reliable supplies of oil by moderating global demand for oil."[27]

C. APGA Offers Unsupported Speculation on Price Volatility and Ignores Empirical Price Data Contained In the FLEX Application

APGA contends that FLEX's proposed LNG exports will drive up domestic prices by "forcing U.S. consumers to compete with end-users in other nations" where natural gas prices are higher. In reality, FLEX's proposed exports will cause no material increase in domestic natural gas prices. As discussed in the FLEX Application, FLEX commissioned Altos Management Partners ("Altos") to analyze the effects of the proposed Liquefaction Project exportation on the

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[25] The EIA also forecast that domestic natural gas consumption for electric power generation will increase 0.5% through 2035, up from 0.3% in its 2010 report. U.S. ENERGY INFORMATION ADMINISTRATION, INTERNATIONAL ENERGY OUTLOOK 2010, TABLE F-3 *available at* http://www.eia.doe.gov/oiaf/ieo/pdf/ieoenduse.pdf; ANNUAL ENERGY OUTLOOK 2011 EARLY RELEASE OVERVIEW, Table A-13 (2010), *available at* http://www.eia.doe.gov/forecasts/aeo/pdf/tbla13.pdf,

[26] Protest, at 8.

[27] The White House, Blueprint for a Secure Energy Future 17 (Mar. 30. 2011) *available at* http://www.whitehouse.gov/sites/default/files/blueprint_secure_energy_future.pdf

domestic natural gas markets.[28] The Liquefaction Project is a well-publicized endeavor, and market participants will adapt to it by increasing production to meet its incremental demand. The change, if any, in the domestic price of natural gas will be determined by the marginal cost of producing 61.5 Bcf/d instead of 60 Bcf/d.[29] The projected price impact of the incremental demand created by FLEX's proposed exports will be between $0.01 and $0.04 per MMBtu in the New York, Boston, Chicago and Henry Hub markets.[30] Even in the Houston Ship Channel, the closest major market to the Liquefaction Project, prices will increase an average of only $0.09 per MMBtu.

APGA suggests that domestic natural gas prices will become increasingly volatile as a result of international political instability, but cites no factual or empirical data supporting its speculative position and offers no direct refutation of FLEX's extensive research and well-supported arguments. APGA's contention that the FLEX Application will drive up domestic natural gas prices has no merit and should be accorded no weight in DOE/FE's deliberations.

D. Granting the FLEX Application Will Produce Extensive Economic Benefits

The FLEX Application describes the significant economic benefits of the FLEX Liquefaction Project. Total direct investment in the fully built Liquefaction Project will exceed $2 billion, and will create between 17,000 and 21,000 pernanent new jobs.[31] When fully operational, the Liquefaction Project will provide substantial tax revenue to state and local governments, from both taxes on natural gas itself and increased regional economic activity related to exploration, production, and infrastructure construction. Lastly, the Liquefaction Project, once approved, will increase LNG exports by $3.9 billion per year, equivalent to more

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[28] FLEX Application, at 16.
[29] FLEX Application, at 18, citing to Altos Report at 7.
[30] See Application, at 18.
[31] Application at 26-27.

than 1% of the entire U.S. trade deficit, and roughly 2% of the deficit for petroleum goods - a significant beneficial impact on the U.S.'s overall balance of trade.[32] APGA's Protest does not even attempt to refute these benefits, and we must draw the conclusion that AGPA concedes their validity.

III. CONCLUSION

FLEX respectfully requests that DOE/FE consider the FLEX Application in light of the data it contains, the extensive work and analysis of EIA, the many letters and resolutions filed in support of it, and the established policy of DOE/FE. FLEX respectfully requests that DOE/FE deny APGA's Protest, issue its order consistent with the action requested in the FLEX Application and Answer, and approve the requested export to Non-FTA countries.

Respectfully submitted,

Attorneys for
Freeport LNG Development, L.P.

April 12, 2011

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[32] Application at 29-30.

VERIFICATION

County of Los Angeles
State of California

I, Les LoBaugh, do hereby verify that I am familiar with the contents of this answer; and that the matters set forth therein are true and correct to the best of my knowledge, information and belief. As affirmed in the Certified Statement accompanying the original application filed in DOE/FE Docket 10-161-LNG, I am a duly authorized representative of Freeport LNG Expansion, L.P. and FLNG Liquefaction LLC.

Les LoBaugh
April 12, 2011