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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. 11-161 LNG**

**ANSWER OF  
FREEPORT LNG EXPANSION, L.P. AND FLNG LIQUEFACTION, LLC  
IN OPPOSITION TO LATE FILED MOTIONS  
OF  
INDUSTRIAL ENERGY CONSUMERS OF AMERICA**

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Pursuant to the Department of Energy's ("DOE") regulations,<sup>1</sup> Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC (collectively, "FLEX") hereby submit this Answer in Opposition to the Industrial Energy Consumers of America ("IECA") Late Filed Motions to Comment and Intervene<sup>2</sup> ("IECA's Late Filed Motion") filed on September 19, 2013 in the above-captioned proceeding. FLEX was not served with copy of the IECA filing, but first became aware of it on October 1, 2013 and promptly filed with DOE, Office of Fossil Energy ("DOE/FE") a request for extension of time on October 2, 2013.

The content of the IECA's Late Filed Motions is duplicative of that previously filed on September 18, 2013 by the American Energy Advantage group (AEA)<sup>3</sup> and previous efforts by

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<sup>1</sup> 10 C.F.R. § 590.303(e) and 590.304(f) (2010).

<sup>2</sup> *Industrial Energy Consumers of America, Consolidated Motions to Comment and Intervene Out of Time*, FE Docket No. 11-161-LNG (September 19, 2013).

<sup>3</sup> *American Energy Advantage, Inc., Consolidated Motions Out of Time*, FE Docket No. 11-161-LNG (September 18, 2013).

their joint members.

**I.**  
**PROCEDURAL BACKGROUND AND INTRODUCTION**

Approximately two years ago, on December 19, 2011, FLEX filed an application (“FLEX Application”) with DOE/FE requesting authorization to export domestically-sourced LNG to countries not party to a Free Trade Act agreement calling for the treatment of natural gas (“non-FTA countries”). The FLEX Application was submitted pursuant to Section 3 of the Natural Gas Act (“NGA”),<sup>4</sup> Part 590 of the Regulations of the DOE,<sup>5</sup> and Section 201 of the Energy Policy Act of 1992.<sup>6</sup> FLEX requested a 25-year export term from the start of commercial exports to cover: (1) the initial term of long-term contracts; (2) the necessary make-up periods; and (3) time required for the sequential startup of the individual liquefaction trains.

Notice of the FLEX Application was published in the Federal Register on February 13, 2012 and designated as FE Docket No. 11-161-LNG (“FLEX Docket”). Comments, protests, motions to intervene, and requests for additional procedures were permitted only until April 13, 2012. Prior to the final date permitted for filing interventions and motions in the FLEX Application, the DOE/FE had announced it had commissioned an exhaustive economic and macroeconomic analysis of the cumulative impact of the proposed LNG exports (the “DOE Study”). The numerous member companies forming IECA are well financed, highly sophisticated and have a history of intense involvement in the LNG export proceedings in the media, before Congress, and at the DOE. Nevertheless, IECA chose not to file an intervention,

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<sup>4</sup> 15 U.S.C. § 717b (2010).

<sup>5</sup> 10 C.F.R. § 590 (2010).

<sup>6</sup> Pub. L. No. 102-486, § 201, 106 Stat. 2776, 2866 (1992) (codified as amended at 15 U.S.C. § 717b(c) (2010)).

comments or procedural motions in the FLEX Application when required. Instead, seventeen months later, IECA filed its excessively late motions (“IECA Late Motions”).

**II.**  
**ANSWER IN OPPOSITION TO THE LATE FILED MOTIONS OF IECA**

Pursuant to the provisions of 10 C.F.R. 590.302(b), FLEX provides its answer in opposition to the IECA Late Motions including its late motion to intervene in this proceeding. IECA is not a party to this docket. For the reasons set forth herein, IECA should be denied intervener and party status and its comments and motions should be rejected.

**A. IECA Has Failed to Provide Good Cause for Its Late Filed Motions.**

The relevant facts are undisputed. On May 20, 2011, before FLEX filed its application and approximately a year before the date required for intervention in the FLEX docket, DOE/FE issued Order No. 2961. DOE/FE stated unequivocally that in processing additional applications, including the FLEX Application, it would evaluate changing circumstances.<sup>7</sup> IECA and its members were therefore on notice before the FLEX Application was even filed that DOE/FE would be considering changing circumstances. Thereafter DOE held in abeyance the processing of all other pending LNG export applications pending the results of the DOE Study.

The first part of the DOE Study was completed by the Energy Information Agency (“EIA”). The second and final part was completed by NERA Economic Consulting (“NERA”). On December 5, 2012 the NERA macroeconomic study was published (“NERA Study”). DOE/FE invited public comments from all interested persons. Initial Comments and Reply Comments were accepted until January 29, 2013. In its notice, DOE stated that all comments and

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<sup>7</sup> *Sabine Pass LNG*, FE Order No. 2961 (May 20, 2011).

reply comments would be posted in all pending LNG export dockets, including the FLEX Docket. This comment procedure provided IECA with its second opportunity to file comments in the FLEX Docket, as well as in all other LNG export dockets.

The day the NERA Study was released, December 5, 2012, the IECA rushed forward to publish an “Immediate Release” strongly condemning the NERA Study, even though IECA admitted it had not yet completed its review of the NERA Study.<sup>8</sup> (See Attachment A, the IECA “Immediate Release”.) At that time, IECA chose not file a motion for late intervention in the FLEX Docket.

Almost 200,000 comments were filed during the NERA Study comment period and all of these were lodged in all pending LNG export dockets, including the FLEX Docket. Although IECA did not seek then to intervene in the FLEX Docket, it did take full advantage of this second opportunity to lodge comments in the FLEX and other pending LNG export application dockets. The IECA comments, filed on January 24, 2013, allege that: “The NERA study is flawed and cannot be used to determine whether or not LNG exports are ‘consistent with the public interest,’ ....”<sup>9</sup> The instant filing by IECA is a flagrant attempt to disrupt well established DOE procedures and an arrogant disregard of the controlling DOE regulations on interventions and motions.

When FLEX filed its application almost two year ago, there were already several other pending applications seeking approval to export LNG. The FLEX Application was noticed in the Federal Register on February 13, 2012.<sup>10</sup> The notice provided a generous period for comments and interventions requiring such filing no later than April 13, 2012, which was approximately

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<sup>8</sup> IECA Press Release, December 5, 2012.

<sup>9</sup> IECA, Comments Re 2012 LNG Export Study-NERA, filed January 24, 2013.

<sup>10</sup> *Ibid.*, 77 F. R. Notice 7568).

one year after DOE declared in Order 2961 that it would consider changed circumstance, etc. In the Federal Register notice, DOE/FE stated:

“Due to the complexity of the issues raised by the Applicants, interested persons will be provided 60 days from the date of the publication of this Notice in which to submit additional procedures.” (Emphasis added.)<sup>11</sup>

DOE regulations explicitly require that motions to intervene must be filed “...no later than the date fixed for filing such motions or notices in the applicable FE notice....”<sup>12</sup> The IECA Late Filed Motions are seventeen months too late.

Several persons did file comments or interventions during the extended period allowed for interventions and motions. However, in spite of the ample time provided in the notice and the content of the *Sabine Pass* decision, FE Order No. 2961 of March 11, 2011, IECA chose not to intervene, not to comment, not to protest, and not to file motions for additional procedures. In its exceptionally Late Motions, IECA offers no explanation for its failures and makes no suggestion that it made any effort to timely intervene.

During the nine months between the March 11, 2011 *Sabine Pass* decision and the release of the NERA Study on December 5, 2012, the news media and trade journals carried innumerable stories on LNG exports, including the potential scenario of unlimited exports. In addition, numerous Congressional hearings were held. As noted, within hours of the release of the NERA Study, the IECA immediately issued a press release critical of the NERA Study. (See Attachment A.) IECA also filed formal comments with DOE that were highly critical of the

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<sup>11</sup> *Ibid*, 77 F.R. Notice, p. 7571).

<sup>12</sup> 10 C.F.R. 590.303(d).

NERA Study.<sup>13</sup> IECA further expressed its opposition to LNG exports to Congress, including by presenting testimony on March 19, 2013.<sup>14</sup> But it did not seek to intervene in the long-pending FLEX Application.

It is now almost two years after the FLEX Application was filed, a year and half after the intervention period in this docket closed, and eight months after the IECA filed its comments with DOE severely criticizing the NERA Study. Now that the regulatory process is at the point where DOE will soon be issuing a decision on the FLEX Application, IECA has suddenly joined with AEA in an outrageous last minute attempt to suspend and delay the processing of the FLEX Application. IECA's so-called "comments" are in fact two improper procedural motions for: (1) adjournment of proceedings, and (2) the commencement of public hearing and a rulemaking. IECA offers only a flimsy tissue of an excuse for its behavior, using exactly the same language utilized by AEA: "(o)nly upon DOE's issuance of the FLEX Order, Lake Charles Order, and Dominion Cove Order, which were entered on May 17, 2013, August 7, 2013, and September 11, 2013, respectively, did it become apparent that IECA's comments would be required in this proceeding."<sup>15</sup> As observed in the FLEX Answer in Opposition to AEA Late Motions, the meaning of this wholly inadequate excuse is not even readily discernible. It certainly does not satisfy the burden that IECA bears to demonstrate a required good faith effort to file within the prescribed time. It certainly cannot mean that IECA was unaware that DOE/FE would approve LNG export applications since IECA's filed comments on the NERA Study and its testimony before Congress clearly indicates otherwise. For the same reasons, it cannot mean that IECA

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<sup>13</sup> *Ibid.*

<sup>14</sup> Testimony of Paul Cicio, President, Industrial Energy Consumers of America, House Committee on Oversight and Government Reform, Subcommittee on Energy Policy, Health Care and Entitlements (March 19, 2013).

<sup>15</sup> IECA's Late Filed Motions, p. 4-5; See also AEA's Late Filed Motions, p. 4-5.



failed to understand the conclusion of the NERA Study that there are positive benefits to all LNG export scenarios and that higher volumes of export lead to greater benefits to the United States.<sup>16</sup> IECA could have intervened during the permitted intervention period. But it chose to not do so and it must now live with that decision.<sup>17</sup>

In its late motions to intervene, IECA has the audacity to also claim: “Given that DOE only recently indicated that it would consider changing conditions with respect to the FLEX Order, Lake Charles Order, and Dominion Cove Order, there is good cause to allow IECA to intervene out of time on this basis alone.”<sup>18</sup> That statement is obviously not credible. Two and a half years before, on May 20, 2011, DOE/FE clearly and publicly stated in the Sabine Pass FE Order No. 2961 that it would do exactly that. Therefore, almost a year before the conclusion of the period authorized for intervention in the FLEX Docket, April of 2012, and **two years before** the date of FLEX FE Order No. 3282, May 17, 2013 referenced by IECA as the moment of its sudden epiphany, DOE had already clearly stated that it would consider changing conditions, including both changes in market conditions and many other factors.<sup>19</sup> No weight should be given to IECA’s claim that it only recently learned that changed conditions would be considered by DOE/FE.

Persons seeking intervention out of time must establish “good cause” before they can be granted that privilege. In its pleadings, IECA claims that DOE/FE decisions in other LNG export proceedings satisfies the good cause requirement for IECA’s late intervention in these proceedings. Accepting that type of illogical and pretentious excuse for “good cause” would

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<sup>16</sup> NERA Study, p. 6.

<sup>17</sup> IECA Comments, *supra*.

<sup>18</sup> IECA’s Late Motions, p. 10; see also, AEA’s Late Motions, p.10.

<sup>19</sup> Sabine Pass Liquefaction, LLC, FE Order No. 2961, p. 31-34 (May 20, 2011).

make a sham out of the DOE regulatory requirements. It would certainly open the flood gates to other pernicious delay tactics. The issuance of other DOE/FE orders in other dockets is not a permissible basis to permit the late filed motions in the FLEX Docket.

The legal requirements for a late filed motion are clear. The movant must satisfy two conditions: (1) “a good faith effort was made to file in a timely manner” and (2) “(n)o party is likely to have been prejudiced.”<sup>20</sup> IECA does not even claim to have made “a good faith effort” to file its motions by the required April 13, 2012 deadline. In the *Sabine Liquefaction LNG* export proceedings, the Sierra Club filed a motion to intervene out of time. DOE/FE denied the motion after concluding that “granting the Motion to Intervene would unnecessarily delay the issuance of final agency action herein and unfairly prejudice the parties to this proceeding.”<sup>21</sup> In this case, the IECA Late Filed Motions have only one purpose, delaying a decision on the FLEX Application. This is not a proper basis for a late filed motion and so these motions must be denied.

**B. The Procedural Matters Raised By IECA In Its Late Filed Motions Are Already Moot**

The IECA Late Filed Motions are simply another transparent attempt to disrupt and prevent LNG exports. As noted in the FLEX Answer in Opposition to the AEA Late Filed Motions, DOE/FE has seen these procedural proposals before. In a decision just recently issued, DOE stated:

“Fundamentally, all of the above requests for procedural relief challenge the adequacy of the opportunity that we have given to the public to participate in this

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<sup>20</sup> *Procedural Order in Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG, p. 4 (March 25, 2011).

<sup>21</sup> *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961-A, p. 26 (2012).

proceeding and the adequacy of the record developed to support our decision in this proceeding.

With respect to opportunity for public participation, we find that the public has been given ample opportunity to participate in this proceeding, as well as the other pending LNG export proceedings. Within this proceeding,... Notice of Application, published in the Federal Register ..., contained a detailed description of ...(the) Application, and invited the public to submit protests, motions to intervene, notices of intervention, and comments. As required by DOE regulations, similar notices of application have been published in the Federal Register in each of the other non-FTA export application proceedings.

Additionally, in December 2012, DOE/FE published the NOA in the Federal Register. As explained above, the NOA described the content and purpose of the EIA and NERA studies, invited the public to submit initial and reply comments, and stated that these comments will be part of the record in each individual docket proceeding. DOE/FE thus has taken appropriate and necessary steps by offering the public multiple opportunities to participate in the non-FTA LNG export proceedings.

Consequently, we do not find it is necessary or appropriate to delay issuance of this Order to augment the record, neither through a rulemaking or public hearing.”<sup>22</sup>

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<sup>22</sup> *Supra*, Order No. 3331, p. 134-135.

The IECA Late Motions are of the same genre of procedural motions DOE has already rejected. IECA merely seeks to divert DOE/FE from its responsibilities by making redundant attempts to delay pending proceedings, jettison DOE regulations, suspend DOE's responsibilities under the Natural Gas Act and embark upon a new and unnecessary rulemaking proceeding. These procedural tactics have already been rejected by DOE/FE in other LNG export proceedings. There is no basis for IECA to seek rehearing of these denied motions through a late filed intervention in the FLEX Application. The FLEX Docket is not a proper venue for "rehearing" those motions in other dockets. The issues raised by IECA's motions are generic to all export dockets and not unique to the FLEX Application. These motions have been decided. The issue is moot. It is time to move forward.

**C. Granting the IECA's Late Motions Would Be Highly Prejudicial**

**1. Motion to Intervene**

Because IECA is not a party, it cannot properly file a motion for additional procedures in the FLEX Docket. After the text of IECA's Late Motions to suspend proceeding and commence public hearings, IECA inserts the same language AEA used in its companion filing: "...IECA is requesting admission as a party to preserve its ability to represent its members in the context of any future DOE rulings or decisions." (Emphasis added.)<sup>23</sup> First, this statement ignores that fact that because IECA is not a party to the FLEX docket. Therefore it is not in a position to file procedural motions in the FLEX Docket. Secondly, IECA's claim is specious on its face. Without party status, IECA does not have standing in the FLEX Docket to "preserve" any right

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<sup>23</sup> IECA's Late Motions, p.10 (emphasis added).

to challenge a decision by DOE/FE in the Docket because IECA does not have a right to preserve.

IECA's further claim that it must be granted intervener/party status so it can challenge any future DOE "rulings or decisions" is so lacking in merit and logic that it hardly deserves a response. Not surprisingly, IECA offers no citation to any DOE regulation or decision supporting its outrageous contentions. If IECA wanted party status in this proceeding, it needed to follow the law like every other person and intervene during the time permitted. It should not be permitted to wait until near the conclusion of the regulatory process and then use its objections to DOE/FE's decisions in other dockets as a basis to be granted late filed intervener/party status in the FLEX Docket. IECA pretends that its Late Motions have a legitimate purpose, when their true purpose is an improper attempt to use the FLEX Docket to disrupt and delay all LNG export dockets.

Because DOE regulations and decisions clearly do not support IECA's position, IECA instead cites various irrelevant FERC decisions.<sup>24</sup> However, the FERC decisions are not supportive either. For instance, IECA's reliance on the FERC decision in the *Tumalo Case* is at best misleading. In that FERC case, the late intervention was granted by FERC only upon a showing that the proposed intervention would not "delay, disrupt, or unfairly prejudice any party to the proceeding."<sup>25</sup> The obvious intent of the IECA Late Motions, which are designed to "delay, disrupt" and "unfairly prejudice" parties, runs counter to the FERC requirement. IECA's attempt to rely upon the DOE/FE decision in *Freeport McMoRan* involving API is similarly

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<sup>24</sup> IECA's Late Filed Motions, p. 10

<sup>25</sup> *Tumalo Irrigation District*, 36 FERC 61, 342 (1986).

inappropriate.<sup>26</sup> In that proceeding, API's intervention was only one week beyond the specified period, not a year and a half late, as is the case with IECA. More importantly API did not seek to adjourn the *Freeport McMoRan* proceeding, let alone all export proceedings, by its intervention.<sup>27</sup> Similarly, the DOE's decision in Order 2961-A denying the Sierra Club's late filed motion to intervene does not provide any support for IECA's position. In that instance, the motion for late intervention was denied by DOE.<sup>28</sup>

Section 590.303(d) of the DOE regulations is designed to protect applicants and other existing parties to proceedings from the disruption and burdens that would be caused by unjustified and disruptive late interventions. FLEX has negotiated a number of long-term contracts with customers. FLEX's strategic planning is well underway. Negotiations with lenders, investors and other project participants are proceeding. Granting party status to IECA at this late time, with its announced intent to disrupt and delay the FLEX Application, would seriously threaten delicate ongoing investment opportunities and the creation of badly needed jobs. The benefits identified in the NERA Study would be delayed and potentially lost. The costs of such a delay in this case would be a significant burden to FLEX and to the many other people and entities participating in the project. Clearly the protracted suspension and delay of the

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<sup>26</sup> *Freeport-McMoRan-Energy LLC*, DOE/FE Docket No. 13-26-LNG, API Motion to Intervene Out-of-Time (2013).

<sup>27</sup> On October 4, 2013, API submitted a letter to DOE on the late filed motions of IECA and AEA. A copy is attached hereto and the text of such incorporated herein.

<sup>28</sup> The applicable DOE regulations require that a motion to intervene must clearly and concisely state the facts on which its claim of interest is based. See 10 C.F.R. § 590.303(b). In denying Sierra Club's motion to intervene DOE/FE found that Sierra Club received notice through the Notice of Application that DOE/FE would be reviewing environmental issues associated with the project, of which Sierra Club claimed it had no notice, and that the potential injury to business interests, outweighed any injury to Sierra Club's interests, which could be raised later before FERC. (Order 2961-A, pp. 24-26.) These are substantially identical circumstances to the ones presented here where adequate notice was provided and the potential burden to FLEX outweighs any burdens to IECA.

regulatory process sought by IECA in the FLEX Docket would unfairly prejudice FLEX. It is hard to image something more prejudicial to an applicant and fundamentally unfair.

In an unsuccessful quest to find any possible justification for these late filed motions, IECA offers that it must be made a party to the FLEX docket “in response to market developments since April 2012 and recent DOE orders....”<sup>29</sup> (Emphasis added.) This excuse is both specious and irrelevant. Under Section 3 of the Natural Gas Act, the DOE/FE is required to make decisions on pending non-FTA export applications and to approve them unless it is demonstrated that an application is inconsistent with the public interest. Long ago, DOE announced it would return to consideration of the pending export applications after the NERA Study’s comment period. Certainly IECA and its sophisticated member companies were aware of this two years ago. For IECA to now claim that DOE should grant its Late Motion to intervene because DOE/FE is performing its legal responsibilities is simply ludicrous.

In the instant case, IECA’s intervention would be highly disruptive to the FLEX proceeding. Allowing intervention or granting any of IECA’s offensive and moot procedural motions would unduly prejudice FLEX and many others. IECA’s Late Motion to intervene with its so called “comments” is part of a larger, desperate attempt to delay and disrupt these LNG export proceedings. Such measures are an abuse of the regulatory process and should not be tolerated. The IECA motion to intervene must be denied as a matter of law and fairness.

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<sup>29</sup> IECA’s Late Filed Motions, p. 3; see also AEA’s Late Filed Motions, p. 3.

## **2. Motions to Suspend DOE Proceeding and Commence Public Hearings and Rulemaking**

As part of the broader campaign to block LNG exports, IECA brazenly claims that “no party in this proceeding will be prejudiced by DOE accepting its comments.”<sup>30</sup> The basis asserted by IECA for this specious claim is that it “do(es) not take any position with respect to whether FLEX’s application should be granted.”<sup>31</sup> The oxymoronic nature of that statement is self-evident. IECA’s Late Motions are blatant attempts to indefinitely delay review of the FLEX Application as part of a larger scheme to prevent LNG exports. IECA’s claim of lack of interest in the outcome of FLEX Application is a further reason to deny IECA party status. But this duplicitous claim by IECA certainly does not eliminate the undue prejudice that would befall FLEX if any of IECA’s Late Motions were granted. IECA’s claim to the contrary fails the test of veracity.

The first part of IECA’s late filing is euphemistically called a “comment.” Perhaps this tactic was chosen because IECA recognized that non-parties, such as IECA, may not file procedural motions in a docket to which they are not a party. Nevertheless, it is not a “comment,” it is a two part motion to: (1) suspend proceedings in this and all other pending LNG export dockets; and (2) hold public hearings and a rulemaking procedure.

The public interest would be undermined if review of the FLEX Application is suspended. During such a delay, the global marketplace will not suspend its search to satisfy its needs for reliable supplies of clean-burning natural gas. IECA knows the global markets could turn away from the United States, having concluded that the United States is not a reliable

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<sup>30</sup> IECA’s Late Filed Motions, p.5. See also AEA’s Late Filed Motions, p. 5.

<sup>31</sup> IECA’s Late Filed Motions, p. 5.



participant in that global market. This is precisely what IECA and its cohorts are seeking to achieve. The FLEX Application has been pending since December 2011. It is time for DOE/FE to complete the required process and to issue a decision conditioned upon the satisfactory completion of the NEPA process.

**D. IECA's Challenges to the Natural Gas Act and DOE/FE Regulations are Moot and Must be Rejected.**

DOE's 1984 Policy Guidelines and DOE regulations are well-established. They comply with the requirements of the Natural Gas Act and are designed to allow free market forces to operate without undue intrusion by government regulators. These Policy Guidelines reflect the Congressional determination that the public interest is best served by a less regulated natural gas market.<sup>32</sup> In the matter of the *Yukon Pacific Corp.* case, the DOE/FE stated:

“(I)n evaluating exports, the DOE is mindful of the broad energy policy principles set forth in the DOE's natural gas import policy guidelines. While those guidelines deal with imports, the principles are applicable to exports as well. The guidelines establish the policy that market forces will generally bring about results more in the public interest than will extensive regulations.”<sup>33</sup>

DOE/FE has been exceptionally diligent and meticulous in carrying out its regulatory responsibilities. Claims to the contrary are unjustified. IECA's attack on DOE regulations is not a proper subject for this FLEX proceeding. Similar allegations were properly rejected by DOE/FE as recently as the *Dominion Cove Point* DOE/FE Order No. 3331. Likewise, they should be rejected here.

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<sup>32</sup> See Natural Gas Policy Act of 1978; See also, *Transcontinental Gas Pipeline Corp. v. State Oil and Gas Board of Mississippi*, 474 U.S. 409, 422-424 (1986).

<sup>33</sup> *Yukon Pacific Corp.*, DOE/FE Order No. 350, p. 10 (1989).

Concerning IECA's allegations that the Natural Gas Act is outdated, if IECA is serious, those are allegations that should be presented to Congress, not DOE. DOE is bound to follow the law as enacted by Congress. The operative provision of the Natural Gas Act is that the FLEX LNG export application must be approved unless it is demonstrated that such export is not in the public interest. Predictably IECA ignores the principal issue here. IECA's criticism of DOE's regulations and policies are without merit and should be rejected. Its criticism of the Natural Gas Act is in the wrong forum.<sup>34</sup>

**E. IECA's Late Filed Motions Mischaracterize the NERA Report.**

IECA mimics AEA's claim to be surprised that DOE has authorized a volume of LNG exports that "moderately exceeds" the "low" volume export scenario used by NERA. Certainly that is not a legitimate basis for these Late Filed Motions. Neither is it credible, particularly in light of IECA's extensive and long-term involvement in LNG export matters, including its comments filed with DOE on the NERA Study. IECA is well aware that the NERA Study used several different scenarios in its analysis, including both "low" and "high" cases.<sup>35</sup> In fact, IECA's own comments on the NERA Study explicitly refer to the NERA's use of a low, high and "unlimited" scenario.<sup>36</sup> (Emphasis added.) As IECA has known for almost a year, the NERA Study found:

"In all of the scenarios analyzed in this study, NERA found that the U.S. would experience net economic benefits from increased LNG exports. Only three of the cases analyzed with the global model had U.S. exports greater than the 12Bcf/d

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<sup>34</sup> IECA's Late Filed Motion, p.5-9.

<sup>35</sup> NERA Study, p. 3.

<sup>36</sup> IECA Comments, p. 2.

maximum exports allowed in the cases analyzed by EIA. These were the USREF\_SD, the HEUR\_D and the HEUR\_SD cases. NERA estimated economic impacts for these three cases with no constraint on exports, and found that even with exports reaching levels greater than 12 Bcf/d and associated higher prices than in the constrained cases, there were net economic benefits from allowing unlimited exports in all cases. Across the scenarios, U.S. economic welfare consistently increases as the volume of natural gas exports increased. This includes scenarios in which there are unlimited exports.”<sup>37</sup>

Nowhere does the NERA Study even suggest capping exports at or near the “low” scenario. Furthermore, DOE has never stated it would “cap” the export level at the NERA “low” scenario. IECA knows that. Its alleged surprise is not credible and cannot be a basis for granting any of its Late Filed Motions. In fact, there is absolutely no justifiable basis to grant any of IECA’s Late Filed Motions. IECA’s Late Filed Motions must all be denied.

### **III. CONCLUSION**

IECA is not a party to this docket and a non-party cannot properly file procedural motions in a docket to which it is not a party. The IECA’s pleadings do not display a scintilla of the good cause required for a late motion to intervene. IECA has provided no legitimate basis to be granted intervener/party status. IECA’s request to suspend processing this FLEX Application is out of time, improper, without merit, disruptive, unduly prejudicial, and contrary to DOE’s regulations under the Natural Gas Act. In summary, there is no legal basis to grant any aspect of the IECA’s Late Motions.

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<sup>37</sup> NERA Study, p. 6.

maximum exports allowed in the cases analyzed by EIA. These were the USREF\_SD, the HEUR\_D and the HEUR\_SD cases. NERA estimated economic impacts for these three cases with no constraint on exports, and found that even with exports reaching levels greater than 12 Bcf/d and associated higher prices than in the constrained cases, there were net economic benefits from allowing unlimited exports in all cases. Across the scenarios, U.S. economic welfare consistently increases as the volume of natural gas exports increased. This includes scenarios in which there are unlimited exports.”<sup>37</sup>

Nowhere does the NERA Study even suggest capping exports at or near the “low” scenario. Furthermore, DOE has never stated it would “cap” the export level at the NERA “low” scenario. IECA knows that. Its alleged surprise is not credible and cannot be a basis for granting any of its Late Filed Motions. In fact, there is absolutely no justifiable basis to grant any of IECA’s Late Filed Motions. IECA’s Late Filed Motions must all be denied.

### **III. CONCLUSION**

IECA is not a party to this docket and a non-party cannot properly file procedural motions in a docket to which it is not a party. The IECA’s pleadings do not display a scintilla of the good cause required for a late motion to intervene. IECA has provided no legitimate basis to be granted intervener/party status. IECA’s request to suspend processing this FLEX Application is out of time, improper, without merit, disruptive, unduly prejudicial, and contrary to DOE’s regulations under the Natural Gas Act. In summary, there is no legal basis to grant any aspect of the IECA’s Late Motions.

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<sup>37</sup> NERA Study, p. 6.

FLEX respectfully requests that DOE promptly deny all of the IECA's Late Motions, deny IECA intervener and party status, reject the proffered so-called "comments," and expeditiously complete its responsibilities under the Natural Gas Act by issuing its conditional decision on the long-pending FLEX Application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Les Lo Baugh', written over a large, stylized, cursive flourish.

Les Lo Baugh  
Brownstein Hyatt Farber Schreck, LLP  
Attorneys for  
Freeport LNG Expansion, L.P.  
FLNG Liquefaction, LLC

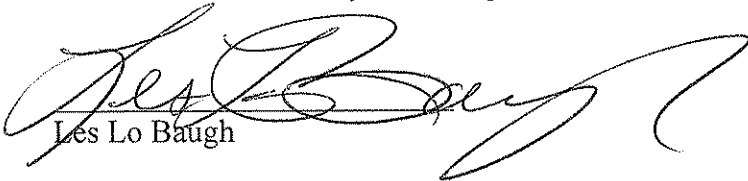
October 15, 2013

VERIFICATION  
and  
CERTIFIED STATEMENT


County of Los Angeles

State of California

I, Les Lo Baugh, being duly sworn on his oath, do hereby affirm that I am a duly authorized representative of Freeport LNG Expansion, L.P. and FLNG Liquefaction LLC; 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.

  
Les Lo Baugh

Sworn to and subscribed before me, a Notary Public, in and for the State of California, this 15<sup>th</sup> day of October 2013.

  
Patricia Cormier Herron, Notary Public



## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the parties on listed below in Docket No. 11-161-LNG and DOE/FE for inclusion in the FE dockets in the above-referenced proceedings in accordance with 10 C.F.R. § 590.107(b)(2011).

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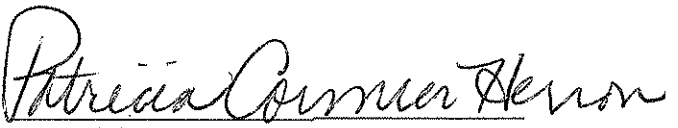
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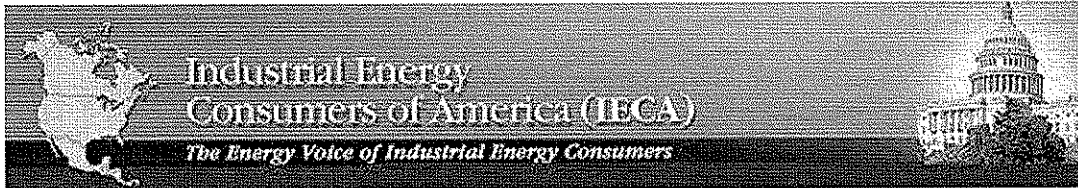
Paul N. Cicio  
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Dated at Los Angeles, California, this 15<sup>th</sup> day of October, 2013.

By:   
Patricia Cormier Herron  
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2029 Century Park East, Suite 2100  
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# ATTACHMENT A





## PRESS RELEASE

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FOR IMMEDIATE RELEASE  
December 5, 2012

CONTACT: Marnie Satterfield  
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### **“IECA Comments on Release of the DOE Study on LNG Exports”**

On behalf of the Industrial Energy Consumers of America (IECA), we appreciate the efforts of the U.S. Department of Energy and its release of the study “Macroeconomic Impacts of LNG Exports from the United States.” The study is an important step in addressing changes to demand through exports, and its impact. “Once export applications are approved, there is no putting the genie back in the bottle,” said Paul N. Cicio, President of IECA. “The export application approvals are for 20-30 year time periods and a lot can happen. For this reason it is important that policy makers thoughtfully evaluate the implications.”

Although IECA is in the process of evaluating the study, there appears to be at least four weaknesses to the report.

First and most important, the report does not compare the economic benefits of exporting natural gas versus using it as a domestic jobs creator. There is no question that if we use these resources domestically, it will maximize economic growth and job creation for this country. The best solution to our abundant supply is greater use domestically, and Congress should carefully look at the barriers to that end.

Second, the report unfortunately uses EIA AEO 2011 demand forecast assumptions, which say electricity demand for natural gas will decrease by 2020, and that there will be only a small increase in industrial demand. Those assumptions mean short-term impacts to price are understated. For sure, there will be extraordinary new demand by the industrial sector during this time period.

Third, it does not adequately address the EPA and BLM regulations on natural gas drilling that could negatively impact production, nor does it address the horde of forthcoming EPA regulations that will drive demand.

And fourth, it does not address the implications of removing the Intangible Drilling Costs (IDCs) tax provision that allows the industry to deduct expenses and generate the cash flow needed to invest in drilling. If Congress took this provision away, natural gas production could drop by about one-third.

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*The Industrial Energy Consumers of America is a nonpartisan association of leading manufacturing companies with \$960 billion in annual sales and with more than 1.2 million employees worldwide. It is an organization created to promote the interests of manufacturing companies through advocacy and collaboration for which the availability, use and cost of energy, power or feedstock play a significant role in their ability to compete in domestic and world markets. IECA membership represents a diverse set of industries including: chemical, plastics, steel, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, brewing, cement, agricultural equipment, and auto.*