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May 11, 2012

VIA FEDERAL EXPRESS

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

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RE: In the Matter of Freeport LNG Expansion, L.P.
FLNG Liquefaction, LLC
FE Docket No. 11-161-LNG
Motion for Leave to Answer And Answer of Freeport LNG And FLNG Liquefaction LLC to
Motion to Intervene and 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 Motion to Intervene and Protest of The American Public Gas Association.

Respectfully submitted,

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

cc: David Schryer, American Public Gas Association
William T. Miller, Esq.

ORIGINAL

**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

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

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Application should be addressed to:

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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 to Intervene and Protest ("Protest") filed on April 13, 2012 in the above-captioned proceeding. In its Protest, APGA contends that FLEX's application for authorization to export LNG ("FLEX Application") is inconsistent with the public interest and should be denied because LNG exports will cause a significant increase in domestic natural gas prices, and because FLEX's proposed LNG exports are not economically viable over the long term. APGA's Protest mischaracterizes the public interest arguments set forth in the FLEX Application and overstates the conclusions reached in recent Energy Information

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

Administration (“EIA”) reports. As explained below, this Protest fails to overcome the presumption that FLEX’s proposed export of LNG is in the public interest.

I. PROCEDURAL BACKGROUND

On December 19, 2011, FLEX filed its 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 carrier, and with which trade is not prohibited by U.S. law or policy. 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 February 13, 2012 and provided, among other things, that comments, protests, motions to intervene, and requests for additional procedures be filed with DOE/FE no later than April 13, 2012. APGA submitted its Protest on the final day of the comment period.

II. ANSWER TO PROTEST

In its Protest, APGA asserts that FLEX’s proposed LNG exports will cause significant increases in domestic natural gas prices, and warns that such increases may impair efforts to reduce reliance on coal-fired energy, raise energy costs, and harm domestic manufacturing

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)).

industries. APGA also claims that domestic environmental regulations, reduced estimates of recoverable natural gas resources, and international competition will render FLEX's proposed LNG exports economically infeasible in the long run. For these reasons, APGA argues that approval of the FLEX Application would be inconsistent with the public interest.

As explained below, APGA's exaggerated and self-contradictory claims fail to overcome the statutory presumption in favor of granting the FLEX Application, and APGA's protest should be granted no weight by DOE/FE in its deliberations.

A. APGA Fails to State a Claim of Interest in the FLEX Application

APGA seeks to intervene in this proceeding and has requested full rights to participate as a party. The DOE regulations providing for such intervention, however, require APGA to state clearly and concisely the facts on which its claim of interest is based.⁶ As an entity seeking intervenor status pursuant to DOE/FE regulations, APGA must also provide factual and legal support for its position.⁷

APGA represents publicly-owned natural gas distribution systems who purchase natural gas supplies and related services in the domestic market, and who are concerned that FLEX's proposed LNG exports will increase domestic natural gas prices. Rather than explain how its members' interests might be affected by FLEX's proposed LNG exports, APGA's Protest lists a series of highly improbable scenarios. APGA's stated concerns are not specific to the FLEX Application, but raise general policy issues associated with LNG exports and regulation of the domestic natural gas market. Because APGA has failed to state the facts on which it asserts a claim of interest in the FLEX Application, its motion to intervene should be denied.

⁶ 10 C.F.R. § 590.303(b).

⁷ 10 C.F.R. § 590.303(c).

B. APGA Fails to Show that FLEX's Proposed LNG Exports are Inconsistent with the Public Interest

DOE/FE has consistently ruled that Section 3 of the Natural Gas Act⁸ creates a rebuttable presumption that proposed exports of natural gas are in the public interest. As acknowledged by APGA, DOE/FE's public interest analysis considers several factors including the domestic need for the gas, the security of domestic natural gas supplies, and any other issue determined to be appropriate.⁹ APGA claims that current gasoline prices illustrate "the dangers and downsides of the U.S. becoming part of a global natural gas market." This isolationist stance ignores the fact that DOE/FE also considers many other factors, including whether the proposed LNG exports are consistent with its policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements.¹⁰

The FLEX Application was buttressed by substantial evidence supporting the presumption that its proposed exports are in the public interest, including minimal impacts on U.S. natural gas prices and significant benefits to the local, regional, and national economy, the national balance of trade, American energy security, and the global environment. The FLEX

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

⁹ *Sabine Pass Liquefaction LLC*, FE Docket No. 10-111-LNG, Opinion and Order Conditionally Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations. at p. 29.

¹⁰ *Id.* The free trade principle is in accord with DOE/FE's Policy Guidelines, which promote free and open trade by minimizing federal control and involvement in energy markets. Policy Guidelines and Delegation Orders Relating to the Regulation of Imported Natural Gas, 49 Fed. Reg. 6,684 (Feb. 22, 1984).

Application relied in part on the recently published Deloitte MarketPoint LLC report assessing the potential domestic economic impacts of LNG exports (the “Deloitte Report”), which concluded that “the magnitude of domestic price increase that results from export of natural gas in the form of LNG is likely quite small.”¹¹ APGA’s Protest fails to rebut either the evidence presented in the FLEX Application or the presumption that the Application is in the public interest.

1. FLEX’s Proposed LNG Exports Will Have a Minimal Effect on Gas Prices

In support of its Protest, APGA refers to a report published in January 2012 by the Energy Information Administration (“EIA”) titled “Effect of Natural Gas Exports on Domestic Energy Markets”¹² (“EIA Report”). The EIA Report bases its projections of potential price impacts on four different export-related demand scenarios:

- 6 Bcf/d phased in over 6 years (the low/slow scenario);
- 6 Bcf/d phased in over 2 years (the low/rapid scenario);
- 12 Bcf/d phased in over 12 years (the high/slow scenario); and
- 12 Bcf/d phased in over 4 years (the high/rapid scenario).

The EIA Report considers each of these scenarios in four different cases: the Annual Energy Outlook 2011 (“AEO2011”) Reference Shale Estimated Ultimate Recovery (“EUR”) case, the High Shale EUR case, the Low Shale EUR case, and the High Economic Growth case.

¹¹ Deloitte Center for Energy Solutions and Deloitte MarketPoint LLC, *Made in America: The economic impact of LNG exports from the United States at 1 (2011)* (hereinafter the “Deloitte Report”), *available at* http://www.deloitte.com/assets/Dcom-UnitedStates/Local%20Assets/Documents/Energy_us_er/us_er_MadeinAmerica_LNGPaper_122011.pdf

¹² EIA Office of Energy Analysis, *Effect of Natural Gas Exports on Domestic Energy Markets* as requested by the Office of Fossil Energy (January 2012) (hereinafter, “EIA Report”).

APGA also refers to the EIA's Annual Energy Outlook 2012 Early Release Overview (“2012 Overview”),¹³ which offers lower estimates of technically recoverable gas resources than contained in the AEO2011. Based on these revised resource estimates and the number of export applications pending with DOE/FE, APGA suggests that the "most realistic" scenario will be high/rapid export development combined with Low Shale EUR, resulting in a 54% jump in domestic natural gas prices in 2018.¹⁴ On the contrary, U.S. LNG export capability will develop gradually over many years, and there will be abundant supplies of natural gas to meet both domestic and international demand.

The EIA Report’s rapid export scenarios are unrealistic. It takes years to design and construct an LNG export terminal, acquire necessary state and federal approvals, negotiate multiple long-term supply contracts with potential buyers, and secure financing for such an expensive project. As explained in a recent report by the Brookings Institute's Energy Security Initiative ("Brookings Report), the EIA's low/rapid scenario assumes that four new LNG export terminals will be approved, built, and operating at capacity within two years.¹⁵ The EIA's even more dramatic high/rapid scenario assumes that the U.S. will, in the space of four years, grow from exporting negligible volumes to having roughly one-third of global LNG export capacity.¹⁶ Though various parties have filed applications for authorization to export LNG, it is unlikely that all or even most of this applied-for export authority will ever be realized because of the time, difficulty, and expense of actually commercializing, financing and constructing LNG

¹³ EIA, Annual Energy Outlook 2012 Early Release Overview (January 23, 2012) (hereinafter “2012 Overview”).

¹⁴ APGA Protest at 12.

¹⁵ Brookings Institute Energy Security Initiative, *Liquid Markets: Assessing the Case for U.S. Exports of Liquefied Natural Gas* at 30 (May 2012).

¹⁶ *Id.*

liquefaction and export facilities, and the limitations in global market demand for LNG. While the United States is completing its thoughtful regulatory processing procedures for LNG exports, LNG projects in other countries are moving forward rapidly.

APGA's suggestion that the U.S. would export large quantities of LNG in the Low Shale EUR case makes little sense, because it assumes not only that American companies will be exporting 12 Bcf/d within 4 years, but they will do so even if estimated recoverable supplies drop by 50%.¹⁷ This hypothesis does not reflect real-world conditions or even the EIA Report itself, which warns that its four export scenarios do not vary between High, Low, and Reference Shale EUR cases. The EIA Report clearly states that “[i]n reality, given available prices in export markets, lower or higher U.S. natural gas prices would tend to make any given volume of additional exports more or less likely.”¹⁸ In other words, the high-volume export scenario is unlikely to happen if lower supplies and higher prices make the domestic market more attractive to natural gas producers.

Contrary to the impression APGA hopes to convey, the EIA Report actually projects only moderate price effects for the AEO2011's Reference Shale EUR case, even under its improbably rapid export scenarios. Between 2015 and 2035, residential and commercial consumers are projected to spend only 3.2% more under the low/slow scenario of 6 Bcf/d phased in over 6 years, and 6.9-7.0% under the high/rapid scenario of 12 Bcf/d phased in over 4 years.¹⁹ In the industrial sector, where low transmission and distribution charges mean that fluctuations in the natural gas commodity charge have a larger impact, expenditures during the same period are

¹⁷ EIA Report, *supra* note 12, at 9.

¹⁸ EIA Report, *supra* note 12, at 4.

¹⁹ EIA Report, *supra* note 12, at 15, Table 1.

projected to range between 6.4% and 14.6%.²⁰ These are minimal to moderate price effects, especially given that the EIA Report projects natural gas domestic wellhead prices to rise 57% under the Reference Shale EUR case “even before considering the possibility of additional exports.”²¹

Even these moderate price impacts are overstated, because the EIA Report economic model assumes that investment by gas producers will lag behind new demand. As a result, the EIA’s model predicts that prices will peak when export capacity is filled, then steadily taper off. Given the public application process and long lead time of several years required to construct an LNG liquefaction plant and ramp up operations, future exports will be fully anticipated by the market and producers, midstream players and consumers can act to mitigate the price effect. Unlike the EIA Report model, the Deloitte Report’s model recognizes that there will be ample notice of increased demand and assumes that producers will bring more supplies online, intermediaries will adjust flows, and consumers will react to price changes resulting from LNG exports.²² Production will increase with demand, exerting downward pressure on prices. As a result, any increase in prices would begin earlier and peak at a lower level than suggested by the EIA’s model.

Like the EIA Report, the 2012 Overview calculates minimal price impacts even after assuming that the U.S. becomes a net exporter of LNG by 2016 and an overall exporter of natural gas by 2021.²³ 2025 wellhead prices are projected to be \$5.23 per thousand cubic feet, which is \$0.24

²⁰ EIA Report, supra note 12, at 15, Table 1.

²¹ EIA Report, supra note 12, at 6.

²² Deloitte Report, supra note 11, at 2.

²³ 2012 Overview, supra note 13, at 9.

lower than projected in the AEO2011.²⁴ Though the 2012 Overview projects 2035 prices of \$6.52, this is only four cents higher than the previous year's AEO2011. The falling prices projected in the 2012 Overview support the presumption that approving the FLEX Application is in the public interest, and undermine APGA's argument to the contrary.

a. The U.S. Has Ample Natural Gas Resources

The EIA's 2012 Overview Reference case estimates that the U.S. has 482 tcf of unproved technically recoverable shale gas, a reduction from the AEO2011 estimate of 827 tcf.²⁵ APGA argues that this reduction in shale gas resources will place upward pressure on prices. A closer look at the 2012 Overview, however, reveals that the EIA actually projects long-term increases in natural gas production, mostly resulting from shale plays. Specifically, the 2012 Overview projects 7% more cumulative natural gas production from 2010 to 2035 than estimated in the AEO2011, primarily resulting from increased shale production -- even though the overall estimated resource base has been revised downward.²⁶

The overall decline in estimated unproved technically recoverable natural gas resources largely reflects a decrease in the current EIA estimate for the Marcellus shale.²⁷ As explained in its Application, FLEX's proposed exports will be produced primarily from the Eagle Ford shale in South Texas, not the Marcellus. Wellhead price impacts from FLEX's proposed exports will be distributed primarily within the large and highly liquid Texas and Gulf Coast regional gas market, with minimal effects in other markets such as the Northeast.

²⁴ 2012 Overview, supra note 13, at 13, Table 1.

²⁵ 2012 Overview, supra note 13, at 9.

²⁶ 2012 Overview, supra note 13, at 9.

²⁷ 2012 Overview, supra note 13, at 9.

APGA notes that production of natural gas from shale formations has gained the attention of legislators and regulatory agencies, and suggests that increased regulation will raise the costs of production and increase prices.²⁸ APGA argues that changes in the regulatory landscape that impose additional costs on producers may reduce the economic feasibility of extracting marginal shale gas supplies, thereby reducing the total size of the resources available. However, continuing rapid improvements in gas production technologies and processes have already increased both available reserves and well productivity, and will continue to do so. As discussed in the Brookings Report, an analysis of well-specific data illustrates that both initial production rates and ultimate well recovery have been growing across all production regions and driving down the per-unit cost of gas production.²⁹ Well-developed regulations based on sustainable best practices will benefit the public, the environment, and the natural gas industry. The Obama Administration's recent announcement that it had allocated \$45 million to an interagency research and development program between the Dept. of Energy, Interior, and the EPA to reduce the environmental impacts of shale gas production suggests that the Administration supports long-term sustainable development of shale gas resources.³⁰

b. LNG Exports Will Not Harm Domestic Power Generation, Industrial Manufacturing, or Transportation Fuel Demands

As discussed in the EIA Report, domestic natural gas markets will balance future LNG exports largely through increased natural gas production, mostly from shale plays.³¹ The

²⁸ APGA Protest at 13.

²⁹ Brookings Report, supra note 15, at 5.

³⁰ Brookings Report, supra note 15, at 11. See also John M. Broder, *New Proposal On Fracking Gives Ground to Industry*, New York Times (May 4, 2012).

³¹ EIA Report, supra note 12, at 6.

remainder will be supplied by natural gas that would have otherwise been consumed by the power-generating sector and the industrial sector. APGA argues that new and revised EPA regulations will force the retirement of coal-fired power plants, driving up domestic demand and increasing prices for natural gas above current estimates.³² As a threshold matter, APGA's argument is based on an unsupported presumption that DOE/FE's efforts to spur the development of clean coal technologies, including carbon capture and sequestration, will be a total failure. In any event, the price effects of LNG exports are likely to have only modest effects in the power generation sector.

In the power sector, natural gas has historically been used as a backup for coal and nuclear base load generation and may serve as a "bridge fuel" between coal and renewable sources. For such gas used at the margin, any increase in electricity prices resulting from LNG exports would be limited by the fact that power producers will simply substitute away from gas as soon as it becomes more expensive than other fuels.³³ The EIA Report projects that LNG exports will increase electricity prices under Reference case conditions by between 2% and 3%.³⁴ Similarly, the Deloitte Report forecasts that electricity prices will rise by 1.2% in Louisiana, in the Gulf Coast region where most LNG exports are expected to occur, but less than 1.0% in the Midwest.³⁵

Natural gas is likely to be used as a bridge fuel during any transition away from coal-fired power generation, and in the long run may become a base load fuel itself. Despite APGA's claim that small marginal price increases resulting from LNG exports will somehow prevent natural

³² APGA Protest, at 16.

³³ Brookings Report, *supra* note 15, at 33.

³⁴ EIA Report, *supra* note 12, at 16.

³⁵ Deloitte Report, *supra* note 11, at 13.

gas from becoming a viable alternative fuel for power generation, natural gas is considered an economical alternative at prices much higher than projected in even the highest price-impact scenarios. The demand for natural gas was increasing in the power sector well before the shale gas revolution. In 2005, when average wellhead prices hovered above \$7 per MMBtu, the EIA projected that natural gas demand would increase by 90% between 2003 and 2020.³⁶ The power sector, which built natural gas-fired generation plants while prices were increasing, will continue to benefit from the low prices and abundant supply of domestic shale gas.

APGA alleges that FLEX's proposed LNG exports will destroy American jobs by raising production costs for energy-intensive domestic industries.³⁷ Admittedly, the decline in natural gas prices has been a tremendous boon to the U.S. industrial sector, and the availability of inexpensive natural gas has spurred new investments in petrochemical and plastic facilities in the United States.³⁸ However, because most European and Asian competitors use oil-based products such as naphtha and fuel oil as feedstock, U.S. companies enjoy a significant cost advantage over global competitors and are unlikely to be affected by modest increases in natural gas prices resulting from LNG exports. In fact, The Dow Chemical Company, the largest U.S. chemical company by revenue and one of the companies announcing U.S. expansions spurred by low natural gas prices, recently acknowledged as much when its CEO, Andrew Liveris, expressed tempered support for LNG exports of up to 15% of U.S. natural gas production.³⁹ To the extent that natural gas produced chemicals are exported such products could be characterized as a

³⁶ EIA, Annual Energy Outlook 2005 at 143, 159, *available at* <ftp://tonto.eia.doe.gov/forecasting/0383%282005%29.pdf>

³⁷ APGA Protest at 18.

³⁸ Brookings Report, *supra* note 15, at 34.

³⁹ Bloomberg, Finally, Jack Kaskey, April 26, 2012, www.bloomberg.com/news/u.s. gas export limit.

transformed version of natural gas exports analogous to LNG exports in terms of their impact on other domestic uses of natural gas.

Increased LNG exports present an additional benefit to industrial consumers in the form of ethane, a liquid byproduct of natural gas production. Ethane is a primary feedstock for ethylene, a petrochemical product with numerous applications. According to a study by the American Chemistry Council, a 25% increase in ethane production would yield a \$32.8 billion increase in U.S. chemical production.⁴⁰ Ethane production increased by 30% between 2009 and 2011 and is now at an all-time high production of more than one million barrels per day.⁴¹

c. FLEX's Proposed LNG Exports will Not Increase Price Volatility

In its Protest, APGA contends that as other nations develop their own shale gas resources, international and domestic prices will converge, eliminating the U.S.'s current price advantage and increasing the volatility of domestic prices.⁴² As a historical matter, the volatility of the domestic natural gas market over the last ten years was largely caused by a tight supply-demand balance. The surge in natural gas production has resulted in much lower volatility, with the standard deviation of natural gas prices between 2010 and 2011 dropping to one-third what it was during the 2000s.⁴³

In addition, the LNG market is characterized by technical constraints that will limit volatility. The gas must be liquefied, transported via tanker, and regasified at facilities whose finite capacity imposes physical limits on the international demand for natural gas. When

⁴⁰ American Chemistry Council, *Shale Gas and New Petrochemicals Investment: Benefits for the Economy, Jobs, and U.S. Manufacturing* at p.5 (March 2011), available at <http://www.americanchemistry.com/ACC-Shale-Report>

⁴¹ EIA statistics, available at <http://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=METFUS1&f=M>.

⁴² APGA Protest at 19-20.

⁴³ Brookings Report, *supra* note 15 at 35.

operating at or near full capacity, such facilities will have a relatively constant demand for natural gas, and international shocks would have little impact on domestic prices. Because of the long lead times required to finance and construct LNG liquefaction and regasification facilities, new demand can be anticipated years in advance, allowing market players to adjust production and allocation accordingly.

III. CONCLUSION

DOE/FE has a well-established policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Limiting LNG exports by denying the FLEX Application would constitute a de facto subsidy to domestic consumers at the expense of domestic producers. The APGA Protest is a blatant attempt at rent-seeking, which should be ignored in favor of allowing the markets to allocate U.S. natural gas supplies to their most efficient uses, which will have incidental benefits to the U.S. economy, balance of trade, energy security, and the environment.

APGA has failed to state a claim of interest in the pending Application and failed to demonstrate that the FLEX Application is inconsistent with the public interest. FLEX respectfully requests that DOE/FE consider the FLEX Application in light of the data it contains, the extensive work and analysis of EIA, 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 Expansion, L.P.

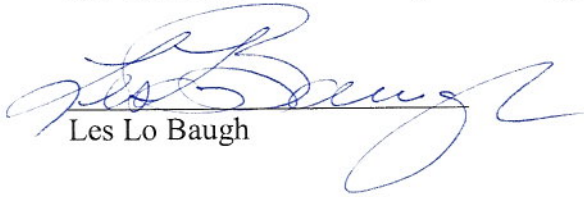
May 10, 2012

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 application; and that the matters set forth therein are true and correct to the best of my knowledge, information and belief.

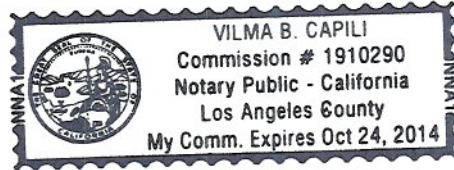


Les Lo Baugh

Sworn to and subscribed before me, a Notary Public, in and for the State of California, this 11th day of May, 2012.



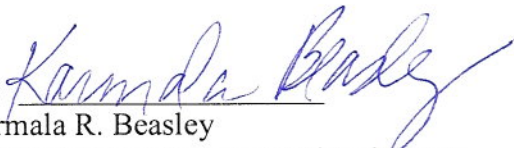
Vilma Capili, Notary Public



CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon 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)(2011).

Dated at Los Angeles, California, this 11th day of May, 2012.

By: 
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