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



Les Lo Baugh
Attorney at Law
310.500.4638 tel
310.500.4602 fax
LLoBaugh@bhfs.com

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 Gulf Coast Environmental Labor Coalition

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 Protest of Gulf Coast Environmental Labor Coalition.

Respectfully submitted,

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

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 GULF COAST ENVIRONMENTAL LABOR COALITION**

Communications with respect to this
Application should be addressed to:

Les E. Lo Baugh, Esq.
Brownstein Hyatt Farber Schreck, LLP
2029 Century Park East, Suite 2100
Los Angeles, CA 90067
(310) 500-4638 (tel)
(310) 500-4602 (fax)

John B. Tobola
Vice President & General Counsel
Freeport LNG Expansion, L.P.
333 Clay St., Suite 5050
Houston, Texas 77002
Tel (713) 333-4241
Fax (713) 980-2903
jtobola@freeporlng.com

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**UNITED STATES OF AMERICA
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**In the Matter of:
FREEPORT LNG EXPANSION, L.P.
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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 SIERRA CLUB**

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 Gulf Coast Environmental Labor Coalition's ("GCELC") Motion to Intervene and Protest ("Protest") filed on April 13, 2012 in the above-captioned proceeding. The Protest does not address the merits of the FLEX application for authorization to export LNG ("Application"), but rather contends that the DOE's approval of the Application would be inconsistent with the public interest unless additional public comments are allowed after DOE publishes a pending report ("Report") on the macroeconomic effects of increased natural gas exports on domestic energy markets. As explained below, this Protest fails to overcome the presumption that FLEX's proposed export of LNG is in the public interest.

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

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. GCELC submitted its Protest on the final day of the comment period.

II. ANSWER TO PROTEST

In its Protest, GCELC asserts a vague claim of interest in "the protection and preservation of the Gulf Coast and Texas as a sustainable region" but fails to explain how the DOE/FE's approval of the FLEX Application will affect that interest. GCELC also seeks a second opportunity for public comment prior to approval, but fails to show good cause for why DOE/FE should provide such additional procedures. Finally, GCELC argues that approval of the FLEX

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)).

Application would be inconsistent with the public interest, but fails to overcome the statutory presumption in favor of granting the FLEX Application. For these reasons, GCELC's protest should be granted no weight by DOE/FE in its deliberations.

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

GCELC 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 GCELC to state clearly and concisely the facts on which its claim of interest is based.⁶ GCELC has failed to make any logical connection between the stated interests of its members and the pending FLEX Application.

GCELC claims to represent 25 different labor unions in the Gulf Coast area, including 134 individual union members who live or work in Brazoria County, Texas near the proposed FLEX liquefaction project. According to GCELC, it has an interest in "the protection and preservation of the Gulf Coast and Texas as a sustainable region balancing economic, social and environmental concerns." No explanation is offered by GCELC for why its interest in the Gulf Coast region would be affected by approval of the FLEX Application, with or without an additional public comment period after the Report is published. As an entity seeking intervenor status pursuant to DOE/FE regulations, GCELC must provide factual and legal support for its position.⁷ Because GCELC has failed to state 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. GCELC Fails to Show Good Cause for Providing Additional Public Comments

DOE/FE published notice of the FLEX Application on February 13, 2012 with a deadline of April 13, 2012 for any motions to intervene, protests, or requests for additional procedures.⁸ GCELC's Protest contends that approval of the FLEX Application would not be in the public interest unless "intervenors and other interested members of the public" are granted a second opportunity to comment after the Report is published. This objection to the FLEX Application is both procedurally unnecessary and inappropriate, because there is no logical nexus between GCELC's request for additional commenting procedures and the burden GCELC must bear to overcome the legally mandated presumption that the FLEX Application is not inconsistent with the public interest.

The DOE/FE's pending Report on the macroeconomic effects of additional LNG exports will provide insight into the cumulative effects of LNG exports on the domestic natural gas market, the U.S. economy, and the U.S. manufacturing sector. Its conclusions will inform DOE/FE's public interest analysis and resulting orders on all pending export applications, including the FLEX Application.

As explained above, GCELC has failed to state a claim of interest in the FLEX Application. Even assuming GCELC does have some economic, social, or environmental interest in the Gulf Coast region that would be affected by FLEX's proposed exportation of LNG, there is no reason it could not have stated its concerns now, rather than after the Report's publication. DOE/FE already provided a sixty day comment period, which is considerably longer than

⁸ 77 Fed. Reg. 7568 (Feb. 13, 2011). Motions to intervene, protests, and other comments may be filed before the date specified in the applicable DOE/FE notice as published in the Federal Register. 10 C.F.R. § 590.303(d), 590.304(e).

ordinary for export proceedings.⁹ Instead of requesting an unnecessary second phase of public comment, GCELC could have used its ample comment period to state what potential effects of the proposed LNG exports it believes might harm GCELC's interests and/or the public interest.

The Report will not invest GCELC with any new type of interest to be protected. GCELC is not entitled to request a second comment period because it failed to demonstrate that it satisfies even the minimum requirement to be granted intervenor status. Granting GCELC's request for a second comment period would effectively give GCELC a second bite at the apple; it should not be given a pass for its failure to demonstrate its interest in this proceeding within the substantial amount of time already granted by DOE/FE to do so. If a second comment period should be allowed by DOE/FE, it should be in accordance with well-established procedures and policies of DOE/FE and general administrative practice limiting participation to only FLEX and those commenters, protesters, and intervenors who timely established a valid interest in the FLEX Application during the original sixty day period.

C. GCELC Fails to Show that Approval of the FLEX Application is Inconsistent with the Public Interest

DOE/FE has consistently ruled that Section 3 of the Natural Gas Act¹⁰ creates a rebuttable presumption that proposed exports of natural gas are in the public interest. In evaluating whether the proposed export is within the public interest, DOE/FE 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, including whether the arrangement is consistent

⁹ See *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG, Procedural Order on Late-Filed Pleadings at 5 (March 25, 2011).

¹⁰ 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)

with DOE/FE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements.¹¹ This policy preference for free trade in natural gas means that the markets, rather than the government, set prices and allocate resources. Nevertheless, DOE/FE's public interest analysis does weigh the projected effects of LNG exports on domestic natural gas prices.

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 Application also discussed a recently published Deloitte Marketpoint LLC report (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." (the "Deloitte Report").¹² GCELC's thinly supported Protest offers no challenge to either the evidence presented in the FLEX Application or the presumption that the FLEX Application is in the public interest.

In support of its Protest, GCELC refers to a March 2012 report prepared by Rep. Edward Markey's staff entitled "Drill Here, Sell There, Pay More" (the "Markey Report") which asserts that the Energy Information Administration ("EIA") has estimated that "exporting even less

¹¹ *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. 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).

¹² 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

natural gas than what is currently under consideration could raise domestic prices 24 to 54 percent, which would substantially increase energy bills for American consumers and could potentially have catastrophic impacts on U.S. manufacturing.”¹³

Rep. Markey has already introduced legislation to prevent the exportation of natural gas produced from public lands, and to prevent FERC approval of LNG export terminals before 2025.¹⁴ The Markey Report is a frankly partisan document, and has not been officially adopted by the Committee on Natural Resources. It contains alarmist statements based on unrealistic assumptions about how quickly LNG export facilities could be brought online and worst-case scenarios for recoverable domestic shale gas reserves. It should be given no weight in DOE/FE’s public interest analysis.

A more reasonable reading of the EIA’s January 2012 report, “Effect of Natural Gas Exports on Domestic Energy Markets”¹⁵ (“EIA Report”) and its Annual Energy Outlook 2012 Early Release Overview (“2012 Overview”)¹⁶ supports FLEX’s argument that its proposed LNG exports will have minimal effects on domestic natural gas prices. 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).

¹³ Drill Here, Sell There, Pay More: The Painful Price of Exporting Natural Gas (March 1, 2012).

¹⁴ The North America Natural Gas Security and Consumer Protection Act , H.R. 4024 (2012), and the Keep American Natural Gas Here Act, H.R. 4025 (2012).

¹⁵ 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”).

¹⁶ EIA, Annual Energy Outlook 2012 Early Release Overview (January 23, 2012) (hereinafter “2012 Overview”).

The EIA Report's rapid export scenarios are unrealistic, because 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 an extremely expensive project. American LNG exports will slowly develop over time and will not, as GCELC assumes, suddenly open the spigot.

GCELC's sensational quotations from the Markey Report are based on cherry-picked data and assume not only that American companies will be exporting 12 Bcf/d within 4 years, but they will do so even if recoverable supplies drop by 50%, as considered in the EIA's Annual Energy Outlook 2011 ("AEO2011") Low Shale Estimated Ultimate Recovery ("EUR") scenario.¹⁷ At best, 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 the AEO2011's 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 GCELC hopes to convey, the EIA Report actually projects only moderate impact on consumer prices in the AEO2011 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

¹⁷ EIA Report, *supra* note 15, at 9.

¹⁸ EIA Report, *supra* note 15, at 4.

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 projected to range between 6.4% and 14.6%.²⁰ These are minimal price effects, especially given that the EIA Report projects natural gas domestic wellhead prices to rise 57% under the AEO2011 Reference Shale EUR case “even before considering the possibility of additional exports.”²¹

The 2012 Overview also 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 projected in the AEO2011, primarily resulting from increased shale production -- even though the overall estimated resource base has been revised downward.²² The overall decline in estimated unproved technically recoverable natural gas resources largely reflects a decrease in the estimate for the Marcellus shale.²³ As explained in the FLEX Application, FLEX’s proposed exports will be produced primarily from the Eagle Ford shale in South Texas, not the Marcellus. Any wellhead price impact 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. As DOE/FE is aware, substantial quantities of natural gas are currently flared for lack of adequate market demand and infrastructure support. LNG exports will help reduce this waste of natural resources.

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

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

²¹ EIA Report, *supra* note 15, at 6.

²² 2012 Overview, *supra* note 16, at 9.

²³ 2012 Overview, *supra* note 16, at 9.

In addition to increased production, the 2012 Overview projects 2025 wellhead prices of \$5.23 per thousand cubic feet, which is \$0.24 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 projection. Moreover, it shows minimal price effects even assuming that the U.S. becomes a net exporter of LNG by 2016 and an overall exporter of natural gas by 2021.²⁵ Both increased production and falling prices projected in the 2012 Overview support the presumption that approving the FLEX Application is in the public interest, and discredit GCELC's argument to the contrary.

1. **GCELC's Request for Additional Procedures is Unrelated to DOE/FE's Public Interest Analysis**

GCELC also offers the purely procedural argument that it would be inconsistent with the public interest for DOE/FE to approve the FLEX Application without providing additional procedures for public comment after the Report is published. Such additional procedures are unnecessary, inappropriate, and unrelated to DOE/FE's determination of whether FLEX's proposed LNG exports are in the public interest. GCELC has failed to state a claim of interest in the pending FLEX Application, failed to show good cause for providing additional public comments, and failed to demonstrate that the FLEX Application is inconsistent with the public interest DOE/FE should deny its request for a second comment period.

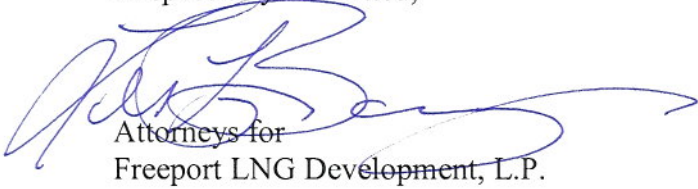
²⁴ 2012 Overview, supra note 16, at 13, Table 1.

²⁵ 2012 Overview, supra note 16, at 9.

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 the EIA, and the established policy of DOE/FE. FLEX respectfully requests that DOE/FE deny GCELC'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.

May 10, 2012

VERIFICATION
and
CERTIFIED STATEMENT

County of Los Angeles


State of California

I, Les LoBaugh, 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 LoBaugh

Sworn to and subscribed before me, a Notary Public, in and for the State of California, this 10th day of May, 2012.



Vilma Capili, Notary Public

