

ORIGINAL

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



Lake Charles Exports, LLC

)

FE Docket No. 11-59-LNG

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

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

I. COMMUNICATIONS

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

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¹ 10 C.F. R. §§ 590.303, 590.304 (2011).

II. INTERVENTION

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

On May 6, 2011, Lake Charles Exports, LLC (“LCE”) filed an application in this proceeding to export approximately 15 million metric tons per annum, equivalent to approximately 2 billion cubic feet per day (“Bcf/d”), of domestically produced liquefied natural gas (“LNG”) by vessel.² LCE seeks authorization to export LNG from a terminal in Lake Charles, Louisiana owned by Trunkline LNG Company to (i) any country with which the United States has, or in the future may have, a free trade agreement requiring the national treatment for trade in natural gas (“FTA”) and (ii) any country with which the United States does not have an FTA but with which trade is not prohibited by U.S. law or policy. LCE requests this authorization for a 25-year term commencing the earlier of the date of first export or ten years from the date of issuance of the requested authorization.

² *Lake Charles Exports, LLC*, Application for Long-Term Authorization to Export Liquefied Natural Gas, Docket No. FE 11-59-LNG (May 6, 2011) (“LCE Application”). LCE filed an amendment to its application on May 26, 2011; the amendment is not relevant to this pleading.

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

III. PROTEST

The development of technology in recent years permitting the recovery of natural gas reserves from domestic shale deposits has ostensibly altered the energy landscape and provides the United States with the opportunity to realistically pursue energy independence. If America makes wise policy choices, choices that are consistent with statements by the President and by the Secretary of Energy (discussed below), this domestically-available and low carbon emission fuel will be available to satisfy U.S. energy needs at competitive prices and to greatly diminish our longstanding and inherently dangerous reliance on imported petroleum products.

Exportation of significant quantities of domestic natural gas, on the other hand, could have significant adverse implications for domestic consumers of natural gas, for U.S. energy supply, and for national security, and in addition makes no sense given that shale gas reserves exist world-wide and can be exploited with the assistance of U.S. technology and know-how.

Therefore, LCE's request for authority to export domestically produced LNG is inconsistent with the public interest and should be denied.

Background

LCE's application is the third of its kind to come before the DOE/FE within a short time span. The initial LNG export application was filed by Sabine Pass Liquefaction, LLC ("Sabine Pass") on September 7, 2010, which requested (and received) authority to export 16 million

metric tons per annum of LNG (equivalent to approximately 2.2 Bcf/d).³ The next LNG export application was filed by Freeport LNG Expansion, LP and FLNG Liquefaction, LLC (collectively, “Freeport”), which requested authority to export 9 million metric tons per annum of LNG (equivalent to approximately 1.2 Bcf/d); that application is pending. Doubtlessly, more such LNG export applications will be filed in the near future. The quantity of domestic natural gas at issue in this and the related proceedings is substantial by any measure and hence the policy implications for our Nation are very significant.

The DOE/FE granted LCE’s authority to export the requested quantity of LNG to any nation that has, or develops, the capacity to import LNG and with which the United States has, or enters into, a Free Trade Agreement requiring national treatment for trade in natural gas (“FTA Nations”).⁴ The DOE/FE granted this authority pursuant to NGA section 3(c), which provides that applications to export shall be “deemed to be consistent with the public interest” and must be “granted without modification or delay.”⁵ Pursuant to this mandate, the DOE/FE did not have discretion to consider the serious policy implications of granting export authority to LCE; DOE/FE routinely states in such orders that its order granting the request “should not be read to indicate DOE’s views” regarding the policy arguments raised in LCE’s application.⁶

Despite this earlier, automatic grant of authority, the DOE/FE has a duty to ensure that the application before it in the instant proceeding for broader export authority is not inconsistent

³ *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG, DOE/FE Order No. 2961.

⁴ *Lake Charles Exports, LLC*, FE Docket No. 11-59-LNG, DOE/FE Order No. 2987.

⁵ 15 U.S.C. § 717b(c) (2011).

⁶ Order No. 2987, at 7.

with the public interest pursuant to NGA section 3(a).⁷ APGA respectfully submits that LCE's proposal to export domestically produced LNG to non-FTA Nations, versus exporting the technology to exploit world-wide supplies of shale gas, is inconsistent with the public interest because it will allow exporters to potentially undermine America's best opportunity to foster energy independence, thereby jeopardizing national security and increasing consumer prices for natural gas, and will do so on the basis of problematic gas supply data (which data, if sustainable, means that shale gas reserves exist on a huge scale world-wide, which reserves should be exploited with the assistance of U.S. expertise).

Energy Independence

The United States now has a previously unimaginable opportunity to seek to achieve energy independence (a goal that has been oft-stated by Congress⁸ and by past administrations⁹) with secure and affordable supplies of domestic natural gas. As President Obama poignantly observed:

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

⁷ 15 U.S.C. § 717b(a) (2011).

⁸ For example, the National Energy Conservation Policy Act, 42 USC Sec. 8201 *et seq.*, provides in 8201(a)(3) that energy efficiency is important because it "will permit the United States to become increasingly independent of the world oil market, less vulnerable to interruption of foreign oil supplies, and more able to provide energy to meet future needs."

⁹ "This intolerable dependence on foreign oil threatens our economic independence and the very security of our nation." President James Earl Carter, Jr., Speech to the Nation, July 15, 1979; earlier, President Carter cast efforts to secure energy independence as "the moral equivalent of war." Speech to the Nation, April 18, 1977; see also, "Energy independence is the best preparation America can make for the future." President Ronald Reagan, Statement on Senate Vote, March 24, 1982.

our economy and our planet, we must have the courage and commitment to change.¹⁰

Instead of exporting domestic natural gas, the United States should maximize its use domestically in order to displace the current reliance on imported petroleum products and on carbon-intensive coal. For instance, as the Secretary of Energy has made crystal clear, domestic natural gas should play a much larger role as a transportation fuel.¹¹ Currently, the U.S. imports billions of dollars worth of oil from around the globe, a great deal of which is used for gasoline to fuel vehicles. The replacement of current gasoline-powered fleets with natural gas vehicles (and support infrastructure) would significantly reduce U.S. dependence on foreign oil, and thereby enhance U.S. security and strategic interests and reduce our trade deficit. Substantial resources are being expended today to put that infrastructure in place.¹² It is time for DOE, in recognition that, as the President said, “America is at a crossroads,” to get with the program, rather than routinely approving export applications that undermine the effort toward energy

¹⁰ Remarks by the President on Jobs, Energy Independence and Climate Change, at the East Room of the White House (January 26, 2009), available at http://www.whitehouse.gov/blog_post/Fromperiltoprogress/.

¹¹ “The most direct way to reduce our dependency on foreign oil is to simply use less of it, starting with the cars and trucks we drive. Nearly 70 percent of our oil use is for transportation, and more than 65 percent of that amount is for personal vehicles... energy independence means changing how we power our cars and trucks from foreign oil to new American-made fuels and batteries.” Nobel Physicist Steven Chu, U.S. Secretary of Energy, *Pulling the Plug on Oil*, Newsweek, April 4, 2009.

¹² For example, as recently reported in Platt’s Gas Daily (July 13, 2011), Chesapeake Energy’s CEO Aubrey McClendon, in committing \$150 million to Clean Energy Fuels to support the addition of 150 liquefied natural gas fueling stations at Flying J and Pilot Truck stops across the nation, observed that the next step toward weaning the country off OPEC oil and on to U.S.-produced gas is developing 1,000 natural gas filling stations along the interstate highway system “coast to coast and border to border.” See also, New Alternative Transportation to Give Americans Solutions Act, H.R. 1380, 112th Cong. (2011) (“NAT GAS Act”) (proposing tax incentives and other measures to encourage adoption of natural gas powered vehicles); Texas S.B. 20 (On July 15, 2011, the governor of Texas signed S.B. 20, supporting a network of natural gas-refueling stations along the Texas Triangle between Dallas/Ft. Worth, San Antonio, and Houston. The new legislation will lay a foundation for wider-scale deployment of heavy-duty, mid- and light-duty natural gas vehicles (NGVs) in the Texas market.)

independence. We must, “[f]or the sake of our security, our economy and our planet, [...] have the courage and commitment to change.”¹³

Exporting domestically produced LNG could well tie U.S. natural gas prices to international markets that oftentimes have higher and less stable natural gas commodity prices. U.S. natural gas prices are now among the lowest in the developed world. As LCE states, the U.S. is home to “the world’s most liquid natural gas market.”¹⁴ In Europe and Asia natural gas markets are less liquid and prices are higher and often indexed to crude oil. Exporting domestically produced natural gas from the United States could tie domestic commodity prices to international fluctuations. The current domestic natural gas market is competitive, liquid and transparent while simultaneously less susceptible to unstable regimes, rapacious cartels, and distant events than foreign natural gas markets, which are often tied to the global oil market.¹⁵ At present, the U.S. natural gas market benefits from the security and political stability in North America. United States policymakers should preserve rather than undermine the stability of domestic commodity markets while at the same time adopting policies that expand domestic demand.

In addition to tying U.S. natural gas prices to international volatility, LNG exports would inflate demand and prices by forcing U.S. consumers to compete with end-users in other nations that are required to pay more for natural gas. This would incontrovertibly increase the price for natural gas in the domestic market, especially in times of supply shortfall. LCE claims that the

¹³ Remarks by the President, *supra*.

¹⁴ LCE Application at 5.

¹⁵ See IFandP Newsroom, *Commodities: Oil Price Volatility Up On Libya Rumours, US Natural Gas Continues its Slide*, Industrial Fuels and Power Online (March 3, 2011) (reporting on rising prices and volatility in the international market for crude oil and unperturbed, declining prices for domestic natural gas).

DOE/FE should approve its application “regardless of the impact of the proposed export on domestic prices” and conflates a denial of its application with price manipulation by the federal government.¹⁶ The “public interest analysis of export applications,” however, should be “focused on *domestic* need for natural gas,” threats to *domestic* supply, and “other factors to the extent they are shown to be relevant.”¹⁷ Relatively low and stable prices make natural gas viable as a transportation fuel and competitive against coal and fuel oil. The DOE/FE should not pursue policies that directly increase natural gas commodity prices for American consumers, thereby making natural gas less competitive in this country as a replacement fuel for less clean, higher carbon-content fuels.

The U.S. should foster domestic demand and put seemingly abundant natural gas resources to work weaning the country off of gasoline for vehicles and carbon-intensive coal for electric generation. The United States cannot afford to squander the opportunity, now available to it due to increased supplies of domestic natural gas, to meaningfully pursue energy independence – “It falls on us to choose whether to risk the peril that comes with our current course or to seize the promise of energy independence.”¹⁸ Dependence on foreign fuels threatens national security and undermines our ability to respond effectively to turmoil in oil producing regions of the world. The U.S. should pursue policies aimed at keeping domestic gas prices in line with domestic demand, relatively stable and less susceptible to international events by preventing substantial exports of domestically produced natural gas.

¹⁶ LCE Application at 13-14.

¹⁷ *Sabine Pass Liquefaction, LLC*, Opinion and Order Denying Request for Review Under Section 3(c) of the Natural Gas Act, October 21, 2010, FE Docket No. 10-111-LNG.

¹⁸ Remarks by the President, *supra*.

Domestic Supply

Domestic unconventional gas supplies offer an opportunity for the U.S. to pursue greater energy independence, but at the same time, policy makers should proceed cautiously and not inflate the amount of natural gas that can be recovered in an economical and politically acceptable manner. LCE, however, fails to account for the uncertainty that still shadows projections of an exponential increase in recoverable domestic supplies. The linchpin of LCE's application is its "view that recoverable natural gas resources in the U.S. are abundant, cheap and sufficient to meet demand for domestic consumption and LCE's proposed export over the long-term."¹⁹ LCE proceeds to discuss domestic natural gas supply, with the clear focus being that shale gas is the game changer that now warrants converting the United States from an LNG importing nation to an LNG exporting nation. LCE notes, for example, that "[t]he U.S. Energy Information Administration [...] projects the share of shale production will double by 46% by 2035."²⁰ LCE cites statistics from the EIA *Annual Energy Outlook 2011* for the proposition that "the technically recoverable natural gas resource base in the lower 48 is 2,251 tcf, nearly double EIA's 2005 estimate."²¹ LCE then shares its expectation that "assessments of the U.S. recoverable natural gas resource base [will] continue to be revised higher."²²

¹⁹ LCE Application at 8.

²⁰ LCE Application at 9; footnote omitted.

²¹ LCE Application at 10; footnote omitted.

²² *Id.*

While APGA certainly hopes that the prospects for shale gas in this country are as bright as painted by LCE (and other like LNG export applicants), serious policy decisions such as those now facing DOE/FE must be made on the basis of sober judgments, not wishful thinking. The same EIA reports referenced by LCE also contain important warning signs, observing that there is “considerable uncertainty about the ultimate size of the technically and economically recoverable shale gas resource base in the onshore lower 48 States and about the amount of gas that can be recovered per well, on average, over the full extent of a shale gas formation.”²³ EIA notes that some of the uncertainties associated with shale gas formations include the fact that “most shale gas wells are only a few years old, and their long-term productivity is untested” and that “[i]n emerging shale formations, gas production has been confined largely to ‘sweet spots’ that have the highest known production rates for the formation,” which means that “[w]hen the production rates for the sweet spot are used to infer the productive potential of an entire formation, its resource potential may be overestimated.”²⁴ The Securities and Exchange Commission recently initiated an investigation to assess the accuracy of claims made by Marcellus Shale gas producers regarding their production volumes, including issuing subpoenas to companies developing shale gas in that area.²⁵ Articles appearing in the press indicate that

²³ EIA, *Annual Energy Outlook 2011* at 37.

²⁴ *Id.*; see also, Rodney White, *Professor: NY Shale Reserves May Disappoint*, Gas Daily (July 7, 2011) (reporting that Marcellus Shale gas reserves in New York may not be nearly as lucrative as already developed locations in Pennsylvania).

²⁵ Rodney White, *Report: SEC Probing Shale Production Claims*, Gas Daily (Aug. 2, 2011).

there may be other troubling concerns at EIA about the shale gas phenomenon that are not being advertised in EIA's formal publications.²⁶

In addition to the technical issues noted (and not noted) by EIA and by others, there are serious environmental concerns being raised at the state and national level about the technology associated with hydraulic fracturing, now commonly known as "fracking." While these concerns do not affect EIA's projections, which are based on technical and economic data, they may not be ignored by DOE/FE in making policy decisions on applications that depend *entirely* for their viability on ample future natural gas from shale formations. While it is true that there has been much extreme rhetoric on both sides of the "fracking" issue,²⁷ there can be no doubt that the affected states and the Federal Government are taking the health issue seriously.²⁸ The outcomes of those investigations are not now known, and will not be for some period of time. Thus, to draw any policy conclusions based on the "shale gas revolution," as some call it, would be a mistake of immense proportions – especially when those decisions have the very real potential to affect our national security.

²⁶ Ian Urbina, "Behind Veneer, Doubt on Future of Natural Gas," N.Y. Times, June 26, 2011; http://www.nytimes.com/2011/06/27/us/27gas.html?_r=2&hp

²⁷ The newspapers are replete with articles chronicling the uncertain future of shale gas exploration. *See, e.g.*, Ian Urbina, *Regulation Lax as Gas Wells' Tainted Water Hits Rivers*, N.Y. Times Online (Feb. 26, 2011); Ian Urbina, *Wastewater Recycling No Cure-All in Gas Process*, N.Y. Times Online (March 2, 2011); Ian Urbina, *Pressure Limits Efforts to Police Drilling for Gas*, N.Y. Times Online (March 4, 2011); Darryl Fears, *Sitting Atop Huge Gas Reserve, Md. Debates Drilling Practice*, Washington Post Online (March 28, 2011); Ian Urbina, *Insiders Sound an Alarm Amid a Natural Gas Rush*, N.Y. Times (June 25, 2011). Contrary views also abound: *e.g.*, <http://johnhanger.blogspot.com/2011/06/statement-about-todays-nvt-front-page.html>.

²⁸ In its Fiscal Year 2010 Appropriation Conference Committee Directive to EPA, the U.S. House of Representatives ordered the EPA to conduct a study of hydraulic fracturing. That study is currently underway. <http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/index.cfm>; <http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/index.cfm>; On May 5, 2011, U.S. Secretary of Energy Stephen Chu impaneled a group of environmental, industry, and state regulatory experts to study and make recommendations to "improve the safety and environmental performance of natural gas hydraulic fracturing from shale formations." *See* <http://www.energy.gov/news/10309.htm>; *see also* Bill Holland, *DOE Panel Questions Fracking's SDWA Exemption*, Gas Daily (July 14, 2011).

The history of the fossil fuels industry is replete with miscalculations regarding supplies. For instance, not too long ago LCE's corporate parents predicted that the U.S. natural gas market would benefit significantly from the *import* of LNG.²⁹ Not to pick on LCE, but the last time it speculated on the future of the country's natural gas supply, things did not pan out (as most vividly illustrated by the subject application). Conversely, the nation's first LNG export facility in Kenai, Alaska is slated to terminate exports sooner than expected because drilling activity in Alaska's Cook Inlet has not offset declines in production rates, making it unfeasible to continue LNG exports.³⁰

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

Alternatives to Export of Natural Gas

United States policymakers, including DOE/FE, should aggressively pursue an energy policy that focuses on the need to foster meaningful energy independence in the shortest time frame possible by, among other steps, increasing the current and long-term availability of natural gas through the environmentally-sound development of natural gas reserves from shale and from

²⁹ See, e.g., *BG LNG Services, LLC*, Application of BG LNG Services, LLC for Long-Term Authorization to Import Liquefied Natural Gas from the Federal Republic of Nigeria, Docket No. FE 03-76-LNG (November 3, 2003) (application for import authority through the Lake Charles LNG terminal related to 20-year LNG purchase agreement).

³⁰ Isabel Ordonez, *Conoco to Stop LNG Exports from Kenai Plant in Alaska*, Wall Street Journal Online (Feb. 10, 2011).

offshore deposits, as well as from methane hydrates. Regarding the demand side of the equation, United States policymakers should encourage the use of natural gas as low carbon, efficient and geopolitically viable energy source for use in this country. Policymakers should foster the use of natural gas as a replacement transportation fuel for gasoline and should encourage the direct use of natural gas for residential and commercial end uses such as space heating, water heating, and the like where the greater efficiency and lower emissions of natural gas (on a source to site basis) has been amply demonstrated.³¹ U.S. policymakers should encourage the use of natural gas for distributed and other power generation to decrease reliance on coal and complement clean, albeit intermittent, energy sources such as wind and solar. APGA observes that most electric generation built since 2000 is fueled with natural gas, and the EIA projects that most new electric generation plants will be fueled by natural gas,³² which has obvious significance for the demand for natural gas in the immediate and long-term future. Finally, APGA observes that increased use of natural gas domestically in lieu of oil imports will benefit the U.S. economy by reducing our trade deficit.³³

³¹ *Review of Site (Point-of-Use) and Full-Fuel-Cycle Measurement Approaches to DOE/EERE Building Appliance and Energy Efficiency Standards*, National Academies of Sciences (May 27, 2009) available at http://www.nap.edu/catalog.php?record_id=12670.

³² EIA, *Annual Energy Outlook 2011* at 41 (Finding that in each cost scenario considered by the EIA, the majority of new electric generation capacity will be natural gas-fired.); *see also*, Mark Watson, *Gas Generation to Double by 2020: Report*, *Electric Power Daily* (July 12, 2011) (Reporting on an ICF International forecast that coal plant retirements, increased reliance on intermittent power sources, and the availability of shale gas will cause gas-fired electric generation to more than double between 2010 and 2030).

³³ For example, as recently reported, “[t]he trade deficit in the U.S. widened in May to the highest level in almost three years, reflecting a surge in the cost of imported crude oil. The gap grew 15 percent to \$50.2 billion, exceeding all forecasts of 73 economists surveyed by Bloomberg News and the biggest since October 2008, Commerce Department figures showed today in Washington.” Alex Kowalski, *Trade Deficit of US Unexpectedly Surges on Increase in Crude-Oil Imports*, *Bloomberg News*, (July 12, 2011).

Furthermore, shale gas formations are not isolated to the United States – this is not a U.S. phenomenon; it is a world-wide phenomenon.³⁴ The State Department launched the Global Shale Gas Initiative (“GSGI”) in April 2010 in order to help countries identify and develop their unconventional natural gas resources.³⁵ To date, partnerships under GSGI have been announced with China, Jordan, India, and Poland.³⁶ The big energy players, including ExxonMobil, Chevron, Shell, BP, etc. are spending billions world-wide to pursue shale gas plays.³⁷ The United States is at the forefront technologically of the development of shale gas reserves and should export its technology and expertise, instead of spending billions of dollars to build facilities in order to export a commodity that should be abundant world-wide before the LNG export facilities can even be completed. Let’s not add expensive LNG export white elephants to the existing expensive LNG import white elephants in this country. It is time for the DOE/FE to

³⁴ E.g., Dallas Parker, *Shale Gas: Global Game Changer*, Oil and Gas Financial Journal (Feb. 8, 2011); Vello A. Kuuskra and Scott A. Stevens, *Worldwide Gas Shales and Unconventional Gas: A Status Report*, (“The final segment of this “paradigm shift” - - the worldwide pursuit of gas shales and unconventional gas - - has only just begun, with Australia, China and Europe in the lead. Europe’s gas shale geology is challenging, but its resource endowment and potential are large.”) available at: <http://www.rpsea.org/attachments/articles/239/KuuskraaHandoutPaperExpandedPresentWorldwideGasShalesPresentation.pdf>. Debajyoti Chakraborty, *Asia’s First Shale Gas Pool Found Near Durgapur*, Times of India Online, (January 26, 2011); Hillary Heuler, *Shale Gas in Poland Sparks Hope of Wealth, Energy Security*, Voice of America Online (June 11, 2011) (Reporting on efforts by U.S. and other western gas companies to develop gas from shale deposits); Mark Summor, *The Shale Gas Run Spreads Worldwide*, IPS, Deccan Herald (Aug. 1, 2011)(“Recent discoveries of deeply buried oil shale layers containing natural gas or oil are being reported in Australia, Canada, Venezuela, Russia, Ukraine, Poland, France, India, China, North Africa and the Middle East. Taken together, say some energy analysts, these ‘plays’ could become a game-changer, making Australia and Canada into new Saudi Arabias.”).

³⁵ See <http://www.state.gov/s/ciea/gsgi/>

³⁶ *Id. see also*, Rakteem Katakey, *India Signs Accord with US to Assess Shale-Gas Reserves*, Bloomberg News (November 8, 2010) (The US signed a memorandum of understanding with India to help it assess its shale gas reserves and prepare for its first shale gas auction at the end of this year.); Kate Andersen Brower and Catherine Dodge, *Obama Says US, Poland Will Cooperate on Economy, Energy*, Bloomberg News (May 28, 2011) (Reporting on President Obama’s pledge to share U.S. shale gas extraction expertise and technology on a recent trip to Warsaw); *see also*, *Energy in Poland: Fracking Heaven*, The Economist (June 23, 2011).

³⁷ Ken Silverstein, *Big Oil Betting on Shale Gas*, EnergyBiz (July 31, 2011).

step back and re-think its almost automatic approval of export applications that fly in the face of Administration policy and of common sense.

DOE/FE Order No. 2961

APGA raised many of the same points in its protest in the *Sabine Pass Liquefaction, LLC* proceeding, Docket No. 10-111-LNG, as well as in the *Freeport LNG Expansion, LP* proceeding, Docket No. 10-161-LNG. The DOE/FE ruled for the applicant in the *Sabine Pass* proceeding and in so doing rejected many of the points made by APGA.³⁸ APGA will address the salient aspects of Order No. 2961 below.

Order No. 2961 concludes as follows:

Sabine Pass has submitted substantial evidence showing an existing and a projected future supply of domestic natural gas sufficient to simultaneously support the proposed export and domestic natural gas demand both currently and over the 20-year term of the requested authorization. No commenters or interveners have submitted contrary studies.³⁹

The fact of the matter is that Sabine Pass' presentation relied on the same "shale revolution" that is the basis for the LCE application – a revolution whose outcome is unknown. The "substantial evidence" cited by Order No. 2961 may be a mirage. A government that has the pursuit of energy independence as its declared national policy should not authorize exportation of a valuable commodity whose value at home is incalculable and whose supply is unknown with any degree of certainty at this point in time. As for the observation that "contrary studies" have not been submitted, APGA submits that the studies done by EIA and soon to be done by EPA and state environmental agencies are quite sufficient to show that reliance on the shale revolution

³⁸ *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG, DOE/FE Order No. 2961.

³⁹ *Id.* at 29.

to justify exporting many billions of cubic feet per day of natural gas is not sound governmental policy.

Order No. 2961 seeks to take the unknowns regarding the shale revolution into account via the backdoor – indicating that DOE/FE “is aware of, and hereby takes administrative notice of, ongoing review activities by this agency and other federal agencies into the environmental and safety consequences of shale gas production”⁴⁰ and that DOE/FE “intends to monitor those conditions in the future” to ensure that LNG exports “do not subsequently lead to a reduction in the supply of natural gas needed to meet essential domestic needs.”⁴¹ APGA submits that DOE/FE’s insouciant approach to whether adequate gas supply exists to satisfy both domestic needs, which presumably includes efforts to wean the United States off of foreign oil via use of natural gas as a transportation fuel, and a fledgling but potentially large LNG export industry is not satisfactory under the circumstances. The substantial evidence necessary to support the subject application does not exist, and will not exist, if at all, until hearings and studies by the responsible agencies have been concluded.

If the stakes were not so great, then perhaps proceeding on a wish and a promise might be understandable and even excusable; but the stakes at this “crossroads” in our history are very real and very substantial, as the President and Secretary of Energy have underscored. Natural gas is our best hope both for gaining independence from foreign oil and for cleaning up our environment. Approving LNG export applications without adequate evidence that there is more than ample gas to address growing domestic needs is the antithesis of reasoned decision-making.

⁴⁰ *Id.* at 31.

⁴¹ *Id.* at 32.

APGA implores DOE/FE not to rely on the questionable findings in Order No. 2961 to justify granting the subject application.

And if one assumes *arguendo* that there is ample recoverable shale gas to justify the optimism reflected in the LNG export applications in this (and other) proceedings, then the logical conclusion, since shale gas is a world-wide phenomenon, is to deny the applications on the ground that the more efficient and effective policy is to support the export of the technology and expertise that has made access to shale gas reserves possible. Why would a government dedicated to the pursuit of energy independence ever export a commodity that can and should be used domestically to wean America off of petroleum products – as the President has so forcefully advocated - when it can export the technology that permits others to exploit their own shale gas reserves?

Order No. 2961 “acknowledge[s] that the development of a domestic infrastructure capable of supporting broader use of natural gas in the transportation sector could alter the current situation,” but determines that “[t]o the extent [...] that natural gas becomes a substitute fuel for petroleum on a wide-scale basis in the transportation sector, [...] the argument made by the opponents of the authorization regarding reducing dependence on imported energy could be a factor for consideration in a later proceeding.”⁴² APGA respectfully submits that the future is now – that momentum is building in America for fueling fleet vehicles with natural gas⁴³ and that, if anything should be put off until a “later proceeding,” it is the determination as to (i) whether sufficient natural gas from shale will be available 5-10 years from now when the

⁴² *Id.* at 36.

⁴³ *See, e.g.*, NAT GAS Act; Bill Holland, *Chesapeake to Invest \$1 Billion for Natural Gas Fuels, NGV Stations*, Gas Daily (July 12, 2011) (the country’s top natural gas producer has begun investing millions of dollars in the filling station infrastructure necessary to support natural gas as a widespread transportation fuel).

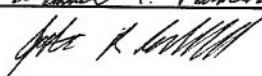
applicant anticipates initiating LNG exports of domestic natural gas and (ii), if sufficient shale gas reserves do exist to justify current optimism, whether the smarter, more prudent course, given the fact that shale gas is a world-wide phenomenon, is to export the technology that permits other countries to develop their own shale gas reserves.

IV. CONCLUSION

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

Respectfully submitted,

AMERICAN PUBLIC GAS ASSOCIATION

By William T. Miller - JRC


William T. Miller
Justin R. Cockrell
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Twelfth Floor
1015 Fifteenth Street, N.W.
Washington, DC 20005

Its Attorneys

August 10, 2011

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

Lake Charles Export, LLC
FLNG Liquefaction, LLC

)
)

FE Docket No. 10-59-LNG

VERIFICATION

WASHINGTON

§

DISTRICT OF COLUMBIA

§

§

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

William T. Miller

William T. Miller
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Fax: (202) 296-0166
Email: wtmiller@mbolaw.com

Subscribed and sworn to before me this 5th day of August, 2011.

Leslie K. Nelson-Walski

Notary Public

My Commission Expires:

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


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

Lake Charles Exports, LLC) FE Docket No. 10-59-LNG
FLNG Liquefaction, LLC)

CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE

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

Dated at Washington, D.C., this 5th day of August, 2011.



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CERTIFICATE OF SERVICE

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

Dated at Washington, D.C., this 10th day of August, 2011.

By:



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