

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

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SABINE PASS LIQUEFACTION, LLC

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FE DOCKET NO. 10-111-LNG

PROCEDURAL ORDER ON  
LATE-FILED PLEADINGS

MARCH 25, 2011

## **I. SUMMARY**

This order addresses two pleadings that were filed out-of-time. For the reasons set forth below, the motion for extension of time in which to file comments submitted by the Governor of Louisiana on December 21, 2010, will be granted and the Governor's comments will be accepted for filing. As also explained below, the motion for leave to intervene out-of-time submitted by the American Public Gas Association (APGA) on March 4, 2011, will be denied but in the interests of ensuring that a complete record is compiled in this precedential proceeding, APGA's protest will be treated as late-filed comments by a non-party.

## **II. BACKGROUND**

On September 7, 2010, Sabine Pass Liquefaction, LLC (Sabine Pass), an indirect subsidiary of Cheniere Energy, Inc. with its principal place of business in Houston, TX, filed an application with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA).<sup>1</sup> Sabine Pass seeks long-term, multi-contract authorization to export up to the equivalent of 16 million tons per annum (mtpa) (approximately 803 billion cubic feet (Bcf) per year) of domestically produced liquefied natural gas (LNG) for a 20-year term. The applicant requests authorization to export LNG by vessel from the Sabine Pass LNG Terminal in Cameron Parish, Louisiana, to any country with which the United States does not have a free trade agreement requiring the national treatment for trade in natural gas, that has or in the future develops the capacity to import LNG, and with which trade is not prohibited by United States law or policy.

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<sup>1</sup> 15 U.S.C. § 717b. This authority is delegated to the Assistant Secretary for Fossil Energy pursuant to Redlegation Order No. 00-002.04D (November 6, 2007).

On October 12, 2010, DOE/FE published a Notice of application in the Federal Register.<sup>2</sup> The Notice called on interested persons to submit comments, protests, and/or motions or notices to intervene no later than December 13, 2010. Pursuant to the Notice, DOE/FE subsequently received six timely-filed letters in support of the application and five timely-filed motions to intervene.

### **III. DISCUSSION**

#### **a. Late-filed Comments from the Governor of Louisiana**

On December 21, 2010, DOE/FE received late-filed comments from the Governor of Louisiana and, on January 25, 2011, DOE/FE received a motion for extension of time to file those comments from Stephen Waguespack, Executive Counsel within the Office of the Governor. The motion for extension of time recounts that a significant effort was made to properly file the Governor's comments before the expiration of the comment period on December 13, 2010. The motion notes that the Governor signed the comments on December 8, 2010, some five days before the end of the comment period. Additionally, the applicant attempted to submit a copy of the comments to DOE/FE on behalf of the Governor before the close of the comment period and counsel to the Governor states that an effort was made to fax a copy of the comments to DOE/FE on December 10, 2010. Unfortunately, DOE/FE was unable to accept the Governor's submission when tendered by the applicant and there is no record that the fax transmission was received.

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<sup>2</sup> 75 FR 62512.

Under the above circumstances, good cause exists to grant the motion for an extension of time and to accept the late-filed comments of the Governor for filing.<sup>3</sup> A good faith effort was made to file the Governor's comments in a timely manner and the comments, when filed on December 21, 2010, were only eight days out-of-time. No party is likely to have been prejudiced by acceptance of these comments for filing and none has argued to the contrary. Accordingly, the late-filed comments of the Governor will be made part of the record in this proceeding.

**b. Motion to Intervene Out of Time by the APGA**

APGA submitted its motion to intervene some 80 days out of time. APGA states that it was late in filing "because APGA was not monitoring export and import applications before the DOE/FE."<sup>4</sup> No other reason for the lateness of the filing is offered except, by implication, APGA suggests that some period of time was consumed in securing a consensus from its membership in support of submitting a motion to intervene.

Sabine Pass submitted a timely-filed answer in opposition to APGA's motion on March 21, 2011. Sabine Pass argues that APGA has not demonstrated good cause for DOE/FE to grant the motion and that granting APGA's motion will unduly delay and disrupt the proceeding, thereby prejudicing and unduly burdening Sabine Pass as well as other parties. Sabine Pass notes that pursuant to regulation, late-filed motions to intervene may be accepted for filing "for good cause shown and after considering the impact of granting the late motion on the proceeding." 10 CFR 590.303(d). Sabine Pass restates the reasons given by APGA for the lateness of its submission and observes that when APGA learned of the application, it could have submitted a motion for extension of time in order to afford more time to formulate a policy

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<sup>3</sup> When a document is required to be filed with FE within a prescribed time, an extension of time may be granted for good cause shown. 10 CFR 590.105(b).

<sup>4</sup> APGA Motion at 3.



position but it did not do so. Thus, according to Sabine Pass, APGA made no effort “to mitigate the potential disruption of its pleading on the instant proceeding or the prejudice to the parties hereto.”<sup>5</sup>

Upon review of the APGA motion and Sabine Pass’ answer, DOE/FE finds that good cause has not been presented to grant the APGA motion to intervene out-of-time. The instant matter was publicly noticed in the Federal Register and interested persons were given sixty days from the date of the notice in which to file motions to intervene. DOE/FE established a sixty day notice period, which is considerably longer than ordinarily given in export application proceedings, in recognition of the need to afford the public sufficient time to consider the precedential nature of the proceeding. The application represents a first-time request before this agency for authorization to export natural gas produced in the lower-48 states. Even so, at some point, the opportunity for interested persons to intervene as parties in a proceeding must close. This is necessary to ensure that the resolution of a proceeding and the issuance of a final order are not unduly delayed by inattentiveness or intentional delay. We observe in this regard that the press reported on the filing of the application. On these facts, APGA’s explanation that it was not monitoring DOE/FE proceedings is insufficient to support a motion to intervene out of time. Also, Sabine Pass’ observation that APGA could have submitted a motion for extension of time but did not do so is noted. On these facts, APGA has not met the standard of “good cause”, DOE/FE will not sanction an intervention at this late date by APGA, and APGA will not be afforded party status.

While DOE/FE will not grant the late-filed motion to intervene, thereby denying party status to APGA, DOE/FE has concluded that there is no prejudice to other parties if the APGA

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<sup>5</sup> APGA Motion at 3.

protest is treated as non-intervenor comments. The precedential nature of this proceeding makes it appropriate for DOE/FE to do so in order to better ensure that a complete record has been developed. We note that all parties had an opportunity to respond to the APGA protest and the applicant, in fact, made such a submission which also will be considered in due course. Moreover, these events have not delayed the resolution of this proceeding.

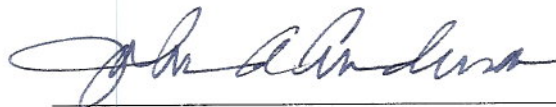
### **ORDER**

Pursuant to section 3 of the NGA, it is ordered that:

A. The motion for extension of time submitted by counsel for the Governor of Louisiana on December 21, 2010, is granted.

B. The motion for leave to intervene out-of-time submitted by APGA on March 4, 2011, is denied.

Issued in Washington, D.C. on March 25, 2011.



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