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March 4, 2011

**VIA Hand Delivery**

C/O Mark Talbert

U.S. Department of Energy (FE-34)  
Office of Oil and Gas Global Security and Supply  
Office of Fossil Energy  
Forrestal Building, Room 3E-042  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585



RE: *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG

Dear Sirs:

Enclosed please find for filing an original and fifteen copies of a motion for leave to intervene out-of-time and protest on behalf of the American Public Gas Association in the above referenced proceeding.

Please date-stamp and return the two additional copies to the messenger.

Please do not hesitate to contact the undersigned at (202) 296-2960 if you have any questions about this filing.

Respectfully submitted,

William T. Miller

Counsel to the American Public Gas Association

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

Sabine Pass Liquefaction, LLC

)

FE Docket No. 10-111-LNG

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

Pursuant to Sections 590.303(d) and 590.304(e) of the Administrative Procedures with Respect to the Import and Export of Natural Gas,<sup>1</sup> the American Public Gas Association (“APGA”) files this motion to intervene out-of-time 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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<sup>1</sup> 10 C.F.R. §§ 590.303(d), 590.304(e) (2010).

## II. INTERVENTION OUT-OF-TIME

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 September 7, 2010, Sabine Pass Liquefaction, LLC (“Sabine Pass”) filed an application for long-term, multi-contract authorization to export approximately 16 million metric tons per annum (“mtpa”) of domestically produced liquefied natural gas (“LNG”) by vessel. Sabine Pass seeks authorization to export LNG from the existing 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 and LNG, that has or in the future develops the capacity to import LNG, and with which trade is not prohibited by U.S. law or policy. Sabine Pass requests this authorization for a 20-year term commencing the earlier of the date of first export or five years from the date of issuance of the authorization requested.

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 out-of-time. APGA was not aware of the instant proceeding before the

Department of Energy Office of Fossil Energy (“DOE/FE”) until recently because APGA was not monitoring export and import applications before the DOE/FE. Once it learned of the subject filing, APGA then needed to formulate a consensus policy position among its membership on the issues raised by this novel request, as the instant proceeding concerns the first request for authorization to convert an existing LNG import facility to an export facility in order to export a substantial volume of domestically produced LNG from the contiguous United States. As described below, APGA believes that the outcome of the instant proceeding (and its presumed precedential status) could have substantial adverse consequences for domestic natural gas supplies, commodity prices, national security and the nation’s energy independence. APGA therefore requests that it be allowed this opportunity to voice its concerns.

### **III. PROTEST**

The discovery of unconventional domestic natural gas reserves over the past several years promises to alter the energy landscape and provides the United States with the ability to become energy independent (a goal that it began articulating over 30 years ago) and control its energy destiny. If America makes wise policy choices now, this domestically-available and low carbon emission fuel will be available to satisfy U.S. energy needs and to end our nation’s dangerous reliance on imported petroleum products – today we import approximately 50% of our petroleum needs. Exportation of substantial quantities of natural gas may have significant adverse implications for domestic consumers of natural gas, for U.S. energy supply, and national security. Therefore, Sabine Pass’s request for authority to export domestically produced LNG is inconsistent with the public interest and should be denied.

## Background

Sabine Pass's application in the instant proceeding<sup>2</sup> represents the first opportunity for the DOE/FE to exercise its policymaking discretion regarding the export of a significant quantity of domestically produced natural gas from the lower 48 states as LNG. Sabine Pass has requested authority to export up to 16 million mpta of LNG, the equivalent of approximately 2.2 billion cubic feet per day on average over a one year period or approximately 2,310,000 dekatherms per day of energy equivalent.

The DOE/FE recently granted Sabine Pass long-term, multi-contract authority to export this 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").<sup>3</sup> 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 "shall be granted without modification or delay."<sup>4</sup> Pursuant to this mandate, the DOE/FE did not have discretion to consider the implications of granting export authority to Sabine Pass and stated that its order granting the request "should not be read to indicate DOE's views" regarding the policy arguments raised in Sabine Pass's application.<sup>5</sup>

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 with the public interest pursuant to NGA section 3(a).<sup>6</sup> APGA respectfully submits that Sabine Pass's proposal to export domestically produced LNG to non-FTA Nations is inconsistent with

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<sup>2</sup> *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG, Application (Sep. 7, 2010) ("Application").

<sup>3</sup> *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-85-LNG, Order No. 2833 (September 7, 2010). Currently, the FTA Nations are Canada, Mexico, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Chile, Peru, Morocco, Oman, Jordan, Bahrain, Australia, and Singapore.

<sup>4</sup> 15 U.S.C. § 717b(c) (2010).

<sup>5</sup> Order No. 2833, at 3.

<sup>6</sup> 15 U.S.C. § 717b(a) (2010).

the public interest because it will allow exporters to squander America's best opportunity to become energy independent, thereby jeopardizing national security and increasing consumer prices for natural gas. Although the instant proceeding concerns the same volume of export capacity as previously authorized in Order No. 2833, the requested export authority is significantly broader, and DOE/FE retains the ability, and has the obligation, to prevent significant adverse consequences to America's quest for energy independence.

### **Energy Independence**

Sabine Pass asserts that exports of domestically produced LNG will promote a global market for natural gas and claims a litany of speculative benefits. At present, however, the United States has a previously unimaginable opportunity to establish its energy independence with secure and affordable supplies of domestic natural gas. Domestic natural gas, however, is secure and affordable because it is less susceptible to the vagaries of international events than petroleum products.

The export of natural gas is inconsistent with a policy of energy independence. 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 carbon-intensive coal. For instance, domestic natural gas should play a larger role as a transportation fuel. Currently, the U.S. imports billions of dollars worth of oil (over half its total consumption) from around the globe, much of which is used for gasoline to fuel vehicles. The replacement of current gasoline-powered fleets and passenger vehicles 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.

Exporting domestically produced LNG will not (as advertised<sup>7</sup>) enhance domestic supplies but rather will simply tie U.S. natural gas prices to international natural gas markets that oftentimes have higher and less stable commodity prices. As Sabine Pass states in its application, “[i]n North America, natural gas is traded in a highly liquid and competitive market and prices are very transparent.”<sup>8</sup> In Europe and Asia, however, natural gas markets are less liquid and prices are predominately indexed to crude oil.<sup>9</sup> Sabine Pass asserts that the introduction of U.S.-produced LNG will help European and Asian markets become more liquid and less sensitive to fluctuations in the price of oil.

Sabine Pass overstates the ability of U.S. exports to transform global markets. The amount of natural gas proposed to be exported from the U.S., while significant on the domestic scale, would be a proverbial “drop in the bucket” compared to global natural gas consumption. Since international markets are often less liquid, less transparent and less competitive, divided by national boundaries, and natural gas commodity price are often indexed to crude oil, it seems far more likely that exporting natural gas from the United States would tie domestic commodity prices to international fluctuations rather than tame international fluctuations.

For example, although Sabine Pass does not discuss potential export contracts in its application,<sup>10</sup> the trade press reports that Sabine Pass is in negotiations with an Italian firm, Enel Trade, for a large portion of its proposed export capacity.<sup>11</sup> Meanwhile the Italian market for natural gas is particularly susceptible to the recent turmoil in that country’s former colony, Libya. Italy depends on Libya for roughly a third of its energy consumption and 12% of its

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<sup>7</sup> Application at 51.

<sup>8</sup> *Id.* at 62.

<sup>9</sup> *Id.*

<sup>10</sup> Sabine Pass declines to discuss interest in the project from potential customers, potential rates, or how it intends to finance the project.

<sup>11</sup> Jeff Barber, *Cheniere Negotiating with Spanish, Italian Firms on Bidirectional Sabine Pass LNG Capacity*, Inside FERC (Feb. 21, 2011).

natural gas needs.<sup>12</sup> It is unrealistic to think that U.S. LNG exports could significantly dampen the impact of current events in Libya on Italian energy markets, let alone broader global markets. Meanwhile, exports would tie U.S. natural gas prices to events abroad, which can dramatically affect demand and price.

Sabine Pass suggests that the U.S. should foster a global natural for gas market through exports,<sup>13</sup> but ignores the fact that the current domestic natural gas market is competitive, liquid and transparent while simultaneously less susceptible to unstable regimes, rapacious cartels, and distant events than the global oil market to which the foreign gas market is tied.<sup>14</sup> At present, the U.S. natural gas market benefits from the security and political stability in North America. United States policymakers should preserve and capitalize on our natural gas windfall rather than undermine the stability of domestic commodity markets.

Sabine Pass's major complaint with the domestic natural gas market is that demand is too low, resulting in low commodity prices. Its proposed solution is to inflate demand and prices through exports of LNG to nations willing to pay more for natural gas. This would incontrovertibly increase the price for natural gas in the domestic market but not in a manner calculated to foster energy independence.

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<sup>12</sup> Associated Press, *Markets Worry About the Endgame in Libya*, N.Y. Times (Feb. 23, 2011) (Libya supplies 12% of Italy's natural gas need); Stephan Faris, *Italy's Bad Romance: How Berlusconi Went Gaga for Gaddafi*, Time Magazine Online (Feb. 24, 2011) (Italy depends on Libya for roughly a third of its energy consumption).

<sup>13</sup> Sabine Pass cites a study produced by the Massachusetts Institute of Technology ("MIT"), MIT Energy Initiative, MIT, *The Future of Natural Gas* (2010), for the proposition that the U.S. should pursue policies that liberalize global natural gas markets. The MIT Study cited by Sabine Pass, however, does not address LNG exports. The MIT Study advocates sharing unconventional extraction techniques, encouraging foreign subsidy reductions, the inclusion of emerging natural gas markets in the International Energy Agency process, and other measures to foster the global market for natural gas, because "the U.S. could become a substantial net importer of LNG in future decades." MIT Study at xvii. The fact that the MIT study concludes that the U.S. could still become a substantial net importer of LNG, despite taking into account recent unconventional gas development, highlights the risk inherent in assuming that domestic unconventional gas supplies can be recovered in an economical and politically acceptable manner. The MIT Study also highlights other measure U.S. policymakers could pursue in order to foster global natural gas markets.

<sup>14</sup> 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).



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. Low prices make natural gas viable as a transportation fuel and competitive against coal. In addition, the DOE/FE should not pursue policies that directly increase natural gas commodity prices for American consumers. Furthermore, DOE/FE owes a duty to the American people to ensure that U.S. energy markets function efficiently, not a duty to try to invigorate a global market for natural gas by encouraging exports of domestically produced gas. As DOE/FE stated earlier in this proceeding, the “public interest analysis of export applications” is “focused on *domestic* need for natural gas,” threats to *domestic* supply, and “other factors to the extent they are shown to be relevant.”<sup>15</sup>

The United States cannot afford to squander the opportunity at energy independence offered by increased supplies of domestic natural gas. 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.

### **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. Sabine Pass cites large inferred quantities of domestic natural gas and its

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<sup>15</sup> *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 (emphasis supplied).

own consultants' predictions that potential future production will exceed Energy Information Agency projections.<sup>16</sup>

Sabine Pass, however, fails to account for the uncertainty that still shadows projections of an exponential increase in recoverable domestic supplies. Environmental and regulatory issues and local opposition hamper fracking operations and shale gas production.<sup>17</sup> Safety and environmental concerns and moratoria hinder offshore production. Given these risks, it is still uncertain whether shale and offshore supplies can continue to be recovered economically in significantly increasing quantities.

The history of the fossil fuels industry is replete with miscalculations regarding supplies. For instance, not too long ago Sabine Pass predicted that the U.S. natural gas market would benefit significantly from the *import* of LNG.<sup>18</sup> Not to pick on Sabine Pass, 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.<sup>19</sup>

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

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<sup>16</sup> Application at 53.

<sup>17</sup> The public discussion and awareness of this subject are evident everywhere; 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). Clearly, at this point, no one knows how this will ultimately play out.

<sup>18</sup> See *Sabine Pass LNG, L.P.*, FERC Docket No. CP04-47-000, Application (Dec. 23, 2003); *Sabine Pass LNG, L.P.*, Docket No. FERC Docket No. CP05-396-000, Application (July 29, 2005).

<sup>19</sup> Isabel Ordonez, *Conoco to Stop LNG Exports from Kenai Plant in Alaska*, Wall Street Journal Online (Feb. 10, 2011).

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**

United States policymakers, including DOE/FE, should aggressively pursue an energy policy that focuses on the need to attain energy independence in the shortest time frame possible by, among other steps, increasing the current and long-term availability of natural gas through the development of natural gas reserves from shale and offshore deposits, as well as methane hydrates. United States policymakers should encourage the use of natural gas as a 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, hot water heating, and the like where the efficiency of natural gas (on a source to site basis) has been amply demonstrated.<sup>20</sup> U.S. policymakers should encourage the use of natural gas for distributed and other power generation to decrease reliance on coal and compliment clean, albeit intermittent, energy sources such as wind and solar. The export of domestically produced LNG is inconsistent with sound public and energy policy and inconsistent with the public interest.

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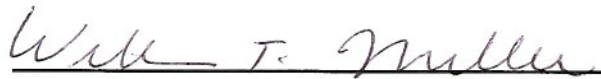
<sup>20</sup> *Review of Site (Point-of-Use) and Full-Fuel-Cycle Measurement Approaches to DOE/EERE Building Appliance and Energy Efficiency Standards*, National Academies of Sciences (May 27, 2009) available at [http://www.nap.edu/catalog.php?record\\_id=12670](http://www.nap.edu/catalog.php?record_id=12670).

#### IV. CONCLUSION

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

Respectfully submitted,

AMERICAN PUBLIC GAS ASSOCIATION

A handwritten signature in cursive script, reading "William T. Miller", is written over a horizontal line.

William T. Miller  
Justin R. Cockrell  
Miller, Balis & O'Neil, P.C.  
Twelfth Floor  
1015 Fifteenth Street, N.W.  
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Its Attorneys

March 4, 2011

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

Sabine Pass Liquefaction, LLC

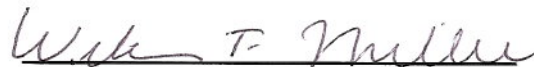
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FE Docket No. 10-111-LNG

**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 4<sup>th</sup> day of March, 2011.



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

Sabine Pass Liquefaction, LLC

)

FE Docket No. 10-111-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

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Subscribed and sworn to before me this 4<sup>th</sup> day of March, 2011.

Leslie K. Nelson-Walski  
Notary Public

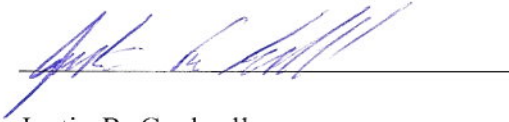
My Commission Expires: \_\_\_\_\_

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

## CERTIFICATE OF SERVICE

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

Dated at Washington, D.C., this 4<sup>th</sup> day of March, 2011.



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