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March 21, 2011

Mr. John Anderson
Office of Fuels Programs, Fossil Energy
U.S. Department of Energy
Forrestal Building
Room 3E-042
1000 Independence Avenue, S.W.
Washington, D.C. 20585

Re: In the Matter of Sabine Pass Liquefaction, LLC
FE Docket No. 10-111-LNG
Motion of Sabine Pass Liquefaction, LLC to Oppose Out-of-Time Intervention of American Public Gas Association and Answer to Protest

Dear Mr. Anderson:

Enclosed for filing on behalf of Sabine Pass Liquefaction, LLC, please find an original and fifteen (15) copies of the Motion of Sabine Pass Liquefaction, LLC to Oppose Out-of-Time Intervention of American Public Gas Association and Answer to Protest.

Should you have any questions about the foregoing, please feel free to contact the undersigned at (212) 318-3009.

Respectfully submitted,

Lisa Tonery
Tania Perez
Rabeha Kamaluddin
Attorneys for
Sabine Pass Liquefaction, LLC

LMT/dmg
Enclosures

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MAR 21 2011

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

In the matter of:

SABINE PASS LIQUEFACTION, LLC) DOCKET NO. 10-111-LNG

MOTION OF SABINE PASS LIQUEFACTION, LLC TO OPPOSE OUT-OF-TIME INTERVENTION OF AMERICAN PUBLIC GAS ASSOCIATION AND ANSWER TO PROTEST

Pursuant to Section 590.303(e) of the Department of Energy's ("DOE") regulations,[1] Sabine Pass Liquefaction, LLC ("Sabine Pass Liquefaction") hereby submits this Answer in opposition to the American Public Gas Association's ("APGA") Motion for Leave to Intervene Out-of-Time and Protest ("APGA Out-of-Time Motion") filed on March 4, 2011 in the above-captioned proceeding. In this Answer, Sabine Pass Liquefaction also addresses APGA's protest included in its Out-of-Time Motion pursuant to Section 590.304(f) of DOE's regulations.[2] In support of this Answer, Sabine Pass Liquefaction states the following:

I. PROCEDURAL BACKGROUND

On September 7, 2010, Sabine Pass Liquefaction filed an application pursuant to Section 3 of the Natural Gas Act ("NGA")[3] with DOE Office of Fossil Energy ("DOE/FE") for long-term, multi-contract authorization to export approximately 16 million metric tons per annum of domestically produced liquefied natural gas ("LNG") from the Sabine Pass LNG Terminal ("Liquefaction Project") to any country with which the U.S. does not have an Free Trade Agreement requiring the national treatment for trade in natural gas and LNG, that has or in the

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[1] 10 C.F.R. § 590.303(e) (2010).
[2] 10 C.F.R. § 590.304(f) (2010).
[3] 15 U.S.C. § 717b (2006).

future develops the capacity to import LNG, and with which trade is not prohibited by U.S. law or policy ("September 7 Application").

Notice of Sabine Pass Liquefaction's September 7 Application was published in the Federal Register on October 12, 2010 ("NOA") and provided, among other things, that protests, motions to intervene, requests for additional procedures and written comments to the September 7 Application be filed with DOE/FE no later than December 13, 2010.[4] A number of entities submitted timely interventions and comments, which were accepted by DOE/FE by way of Procedural Order on December 17, 2010. Subsequently, on March 4, 2011, APGA submitted its Out-of-Time Motion, almost three months after the deadline established by the NOA.

II. MOTION TO OPPOSE APGA INTERVENTION

Sabine Pass Liquefaction hereby opposes APGA's Out-of-Time Motion on the following grounds: (i) APGA has failed to show good cause for filing its Out-of-Time Motion nearly three months beyond the NOA deadline of December 13, 2010; and (ii) granting the Out-of-Time Motion at this late stage will unduly delay and disrupt the proceeding, prejudicing and unduly burdening Sabine Pass Liquefaction, as well as other parties. Section 590.303(d) of the DOE regulations requires that a motion to intervene be filed no later than the date established in the applicable order or NOA, in this case, December 13, 2010, "unless a later date is permitted by the Assistant Secretary for good cause shown and after considering the impact of granting the late motion of the proceeding."[5] In its Out-of-Time Motion, APGA proffers its failure to monitor export and import applications before the DOE/FE as "good cause" for granting an intervention filed nearly three months out of time. APGA states that once it learned of the September 7 Application, it then needed to formulate a consensus policy position among its

[4] 75 Fed. Reg. 62,512 (Oct. 12, 2010).
[5] 10 C.F.R. § 590.303(d).

membership on the issues raised by Sabine Pass Liquefaction therein. (APGA Out-of-Time Motion at 3.)[6] Notably, upon learning of the September 7 Application, APGA did not file a request for an extension of time while it formulated its policy position. Instead, APGA deemed it appropriate to lodge its Out-of-Time Motion without any attempt to mitigate the potential disruption of its pleading on the instant proceeding or the prejudice to the parties hereto.

APGA's stated reason for filing a late intervention does not constitute "good cause." APGA had legal notice of the proceeding by virtue of the NOA, yet it failed to act promptly or prudently.[7] As a sophisticated organization with 700 members in 36 states, and with a proven record of being an active participant in the natural gas industry regulatory arena, APGA should not be allowed to circumvent procedural requirements when it has failed to show good cause for its delay.

Granting APGA's Out-of-Time Motion at this late stage will unduly delay and disrupt the proceeding, prejudicing and unduly burdening Sabine Pass Liquefaction, as well as other parties. Strategic plans, investment opportunities and the creation of many jobs that will stimulate the national, regional and local economies as a direct result of the authorization of the Liquefaction Project are dependent on DOE/FE's authorization of the September 7 Application in a timely manner. In this regard, delving into the policy arguments raised by APGA without a showing of good cause will unnecessarily delay this proceeding and have a cascading impact on the multiple interests represented by the Liquefaction Project. More specifically, parties that will be prejudiced by disruption or delay to this proceeding by APGA's Out-of-Time Motion include:

[6] While APGA claims that it was unaware of Sabine Pass Liquefaction's September 7 Application and the December 13, 2010 deadline for timely intervention, APGA was quoted in a December 7, 2010 Financial Times article regarding the export proposal. *See* Gregory Meyer, *US Gas Export Plan Sparks Price Fears*, FINANCIAL TIMES, Dec. 7, 2010, *available at* http://www.ft.com/cms/s/0/968979ec-0227-11e0-aa40-00144feabdc0.html#axzz1GKiFwzmC (subscription required).

[7] *See Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380 (1947) (holding that Federal Register publication provides notice to all affected parties); *U.S. v. City of Loveland*, 621 F.3d 465, 473 (6th Cir. 2010) (holding that, as a matter of law, publication in the Federal Register constitutes notice).

- Sabine Pass Liquefaction and its affiliates, including Cheniere Energy, Inc., its shareholders and investors, who have dedicated tens of millions of dollars to develop the Liquefaction Project and are prepared to spend $6 billion to see it through.

- The State of Louisiana and Cameron Parish who would receive enormous economic benefits from the investment, including the creation of 100-150 direct long-term, skilled technical jobs and 3,000 peak construction jobs.

- Potential U.S. suppliers of services and equipment, including ConocoPhillips Company, Bechtel and General Electric, all who propose to dedicate substantial resources to the Liquefaction Project.

- Potential customers around the globe who are all waiting to see if U.S. policy on natural gas will be consistent with its philosophical commitments to free trade.

In sum, while Section 590.303(d) of the DOE regulations protects the rights of those parties that have shown good cause for late intervention, it also protects parties like Sabine Pass Liquefaction from the burdens and disruption caused by unjustified, late intervenors. For these reasons, Sabine Pass Liquefaction moves to oppose intervention by APGA in this proceeding. Should DOE/FE allow APGA's Out-of-Time Motion, Sabine Pass Liquefaction offers its comments to APGA's protest below for DOE/FE's consideration.

III. <u>ANSWER TO PROTEST</u>

Sabine Pass Liquefaction submits this Answer in response to APGA's Out-of-Time Motion, which espouses the position that the export of domestically produced natural gas as LNG as proposed by the September 7 Application is not in the public interest as it would link the U.S. with international gas markets, thereby jeopardizing national security and increasing consumer prices. As discussed below, APGA's Out-of-Time Motion requests that DOE apply an ill-defined standard of "energy independence" in evaluating the public interest that has no standing in legal precedence or established U.S. trade policy. Further, APGA does not directly address or otherwise challenge the empirical market studies and other data submitted by Sabine Pass Liquefaction. Those materials establish that the construction and operation of the

Liquefaction Project and the associated export of natural gas as LNG will not have a material impact on U.S. natural gas prices, but rather, will significantly benefit the U.S. economy through the maintenance and creation of tens of thousands of jobs and related taxes and royalties associated with natural gas development activity. In sum, APGA's Out-of-Time Motion is wholly unsupported and fails to overcome the statutory presumption in favor of granting the September 7 Application. Accordingly, it should be accorded no weight by DOE/FE in its review of the September 7 Application.

A. <u>APGA's Out-of-Time Motion Fails to Show that the Liquefaction Project will not be Consistent with the Public Interest</u>

Pursuant to Section 3 of the NGA, DOE/FE is required to authorize exports of natural gas or LNG to a foreign country unless there is a finding that such exports "will not be consistent with the public interest." Section 717b(a) of the NGA thus creates a statutory presumption in favor of approval of the September 7 Application, which an opponent, such as APGA, bears the burden of overcoming.[8] In evaluating an export application, DOE/FE applies the principles described in DOE Delegation Order No. 0204-111, which focuses primarily on domestic need for the gas to be exported, and the Secretary's natural gas policy guidelines ("Policy Guidelines"),[9] which presume the normal functioning of the competitive market will benefit the public. As Sabine Pass Liquefaction demonstrated in the September 7 Application through empirical market studies and other data, the longstanding principles of minimizing federal interference and involvement in natural gas markets, as articulated in the Policy Guidelines, are

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[8] *See Panhandle Producers & Royalty Owners Association v. ERA*, 822 F.2d 1105, 1111 (D.C. Cir. 1987) (holding that Section 3 of the NGA "requires an affirmative showing of inconsistency with the public interest to deny an application" and that a "presumption favoring … authorization … is completely consistent with, if not mandated by, the statutory directive"). *See also Independent Petroleum Association v. ERA*, 870 F.2d 168, 172 (5th Cir. 1989); *Panhandle Producers & Royalty Owners Association v. ERA*, 847 F.2d 1168, 1176 (5th Cir. 1988).

[9] *New Policy Guidelines and Delegation Orders from Secretary of Energy to Economic Regulatory Administration and Federal Energy Regulatory Commission Relating to the Regulation of Imported Natural Gas*, 49 Fed. Reg. 6,684 (Feb. 22, 1984).

particularly relevant in the context of the instant proceeding and existing and projected natural gas markets conditions of abundant domestic supply.

As discussed below, the APGA Out-of-Time Motion fails to show that approval of the September 7 Application will not be consistent with the public interest by expounding an anti-competitive position that is inconsistent with U.S. policy and the public interest. APGA's request is contrary to DOE/FE orders issued to date authorizing exports of natural gas, insofar as these orders reflect and reinforce the principles laid out in the Policy Guidelines that emphasize the ideas of free trade and limited government involvement.[10]

B. APGA's Out-of-Time Motion Expounds An Anti-Competitive Position Not Consistent With U.S. Policy

Much of APGA's Out-of-Time Motion is devoted to its theory that foreclosing access to international markets for U.S. natural gas producers will foster U.S. "energy independence." APGA appears to believe that disallowing exports will create an over-supply situation in the U.S., and as a consequence, the price of natural gas will significantly decline for U.S. consumers. But APGA fails to acknowledge that absent adequate economic incentives, producers will shut-in wells and investments in production basins will decline.[11] The ability to export domestic gas as LNG will greatly expand the market scope and access for domestic natural gas producers and thus serve to encourage domestic production at times when U.S. market prices might not otherwise do so. Such production would be available to supply U.S. markets and to moderate U.S. price volatility.

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[10] *See, e.g., Phillips Alaska Nat. Gas Corp. and Marathon Oil Co.*, FE Docket No. 96-99-LNG, DOE/FE Opinion and Order No. 1473, at 51 (stating that the public interest is generally best served by a free trade policy) (Apr. 2, 1999); *ConocoPhillips Alaska Nat. Gas Corp. and Marathon Oil Co.*, FE Docket No. 07-02-LNG, DOE Opinion and Order No. 2500, at 44-45 (June 3, 2008) (stating that DOE's general policy is to minimize federal government involvement and allow commercial parties to freely negotiate their own trade arrangements).

[11] *See, e.g., CEO: Prices Led Conoco to Shut In 185,000 Mcf/d*, PLATTS GAS DAILY, Oct. 28, 2010, at 1.

Similarly, APGA fails to articulate how an evaluation metric centered around "energy independence" would work in practice or be consistent with the longstanding presumption of U.S. policy that the open exchange of goods, including energy, with international trade partners serves the public interest. As a consequence of this policy, dual imports and exports of all major classes of energy commodities, including coal,[12] petroleum,[13] petrochemicals, natural gas and electricity, are permitted and transpire on the basis of these goods' respective abundance or scarcity in the U.S. relative to international markets. Presumably, APGA would permit the former yet restrict the latter.

According to APGA, "Domestic natural gas ... is secure and affordable because it is less susceptible to the vagaries of the international events than petroleum products." (APGA Out-of-Time Motion at 5.) This represents a gross misreading of the recent history of U.S. natural gas markets. Domestic natural gas is secure and affordable because competitive forces, established by a federal policy commitment to free and open trade, has incentivized the U.S. exploration and production ("E&P") industry to invest in new drilling and completion technologies that have proven highly successful and in turn unlocked vast potential domestic reserves at low prices. The result of competitive forces is that the U.S. E&P industry has developed a significant competitive advantage over other countries.

U.S. natural gas markets as a matter of policy have never been closed to international markets, as exhibited by the recent rapid growth in U.S. LNG import capacity. APGA fails to consider that the exposure to international markets, enabled by a federal commitment to free trade policy, has benefited its many members through an ability to bring LNG imports ashore

[12] U.S. coal companies in 2008 exported 81.5 million short tons and imported 34.2 million short tons of coal, equivalent to 7.0% and 2.9%, respectively, of domestic coal production of 1.17 billion short tons. *See* http://www.eia.doe.gov/emeu/aer/txt/stb0701.xls.

[13] In 2009, the U.S. petroleum industry exported 739 million barrels of crude oil and petroleum products to approximately 140 countries. *See* http://www.eia.gov/dnav/pet/pet_move_expc_a_EP00_EEX_mbbl_a.htm.

when domestic gas prices were higher and more volatile. This same exposure enabled by LNG exports will also benefit its members. The additional natural gas productive capacity created by the permitting of LNG exports would be available to meet unexpected shifts in domestic market conditions, and thereby serve to moderate U.S. gas price volatility and keep prices for U.S. consumers at reasonable levels. The ability to export will expand domestic productive capacity and stabilize long-term domestic natural gas prices over the course of business cycles, while also providing APGA's member communities jobs, tax revenues and a stronger economy.

Furthermore, APGA's position on restricting exports directly conflicts with the Administration's policy goal to increase U.S. exports as stated in the National Export Initiative ("NEI").[14] There can be no doubt that increasing U.S. exports is clearly a priority for the Administration. Thus, it would be inconsistent with this U.S. export-oriented trade policy to deny the September 7 Application in furtherance of a closed U.S. economic policy as proposed by APGA. To the contrary, the President's export policy strongly implies that exports should be deemed to be in the public interest, as they lead to job creation and economic growth. Accordingly, denying the September 7 Application would be inconsistent with both a high-priority government policy and the public interest.

Adoption of the APGA's policy goals also would detrimentally impact the U.S. balance of trade, which is already running at a significant deficit since the U.S. imports considerably more than it exports. In this regard, the U.S. trade deficit increased to $497.8 billion in 2010 from $374.9 billion in 2009, a 32.8% increase that marked the biggest percentage gain in a

[14] *See* Exec. Order No. 13534 of March 11, 2010, 75 Fed. Reg. 12,433 (Mar. 16, 2010), *available at* http://www.whitehouse.gov/the-press-office/executive-order-national-export-initiative. The NEI is designed to reduce barriers to trade and promote U.S. businesses with the goal of increasing exports, thereby creating jobs and boosting the economy. The NEI is to be implemented by the Export Promotion Cabinet, consisting of more than a dozen high level governmental officials including the Secretaries of State, Treasury, Agriculture, Commerce and Labor, as well as the National Security Advisor, the President of the Export-Import Bank of the United States, and heads of several other executive branch departments, agencies and offices.

decade.[15] Petroleum products alone account for $265 billion of that total deficit.[16] Moreover, the expectation is that the deficit will continue to increase in 2011 due to increased oil costs, instability in North Africa and the Middle East, and Europe's continuing sovereign debt woes.[17] In fact, the U.S. trade deficit increased 15% ($6.1 billion) from December 2010 to January 2011 alone.[18] Many economists expect that that the ballooning trade deficit will be a significant drag both on U.S. growth and job creation at least in the first quarter of the year and possibly throughout all of 2011.[19]

C. APGA's Out-of-Time Motion Ignores Factual and Empirical Data

Sabine Pass Liquefaction has established through multiple econometric market studies, third-party findings and other data that the U.S. natural gas resource base is vast, and that the export of natural gas as LNG would result in minimal impacts on domestic natural gas prices yet yield tremendous benefits to the U.S. economy and its international standing associated with the development of these resources.[20] APGA provides no countervailing market information that would challenge these market studies and other data submitted by Sabine Pass Liquefaction, and

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[15] Martin Crutsinger, *Trade Deficit Hits $40.6B in Dec.; Deficit with China is Record*, USA TODAY, Feb. 11, 2011, *available at* http://www.usatoday.com/money/economy/2011-02-11-trade-deficit_N.htm.

[16] *Oil Prices and the Trade Deficit*, http://www.esa.doc.gov/Blog/2011/03/09/oil-prices-and-trade-deficit/ (Mar. 9, 2011).

[17] Peter Morici, *Trade Deficit Destroys 3 Million Jobs per Year*, THE STREET, Mar. 10, 2011, http://finance.yahoo.com/news/Trade-Deficit-Destroys-3-tsmf-218125918.html.

[18] Sudeep Reddy, *Trade Gap Widens as Imports Grow 5.2%*, WALL ST. J., Mar. 11, 2011, at A2, *available at* http://online.wsj.com/article/SB10001424052748704823004576192252572491120.html (subscription required).

[19] *Id.*

[20] Sabine Pass commissioned reports by two highly regarded consulting firms, Advanced Resources International, Inc. ("ARI") and Navigant Consulting, Inc. ("NCI") in support of the September 7 Application. The report prepared by ARI, *U.S. Natural Gas Resources and Productive Capacity* ("ARI Report"), was commissioned to evaluate the scope of natural gas resources in the United States and their potential for future recovery. The ARI Report concluded that U.S. natural gas productive capacity would reach 93 Bcf/d by 2035 based on the U.S. Energy Information Administration's ("EIA") forecast of future prices, resulting in up to 29 Bcf/d of surplus productivity capacity. The report prepared by NCI, *Market Analysis for Sabine Pass LNG Export Project* ("NCI Report"), was commissioned to evaluate the market price impact of LNG exports from the Sabine Pass LNG Terminal under several future U.S. demand scenarios. Based on conservative assumptions of future supply additions, the NCI Report concluded that the addition of LNG export capability would have minimal price impacts on the U.S. market.

requests that DOE/FE deny the September 7 Application based solely on its own conjecture and misreading of facts in claiming that certain project benefits are suspect.

Recent market data also serves to reinforce the abundance of U.S. natural gas supply. The EIA's Annual Energy Outlook 2011 has more than doubled the estimate of technically recoverable U.S. gas reserves, to 827 Tcf from 353 Tcf.[21] The EIA predicts that U.S. natural gas production will grow at a 0.8% annual rate between 2011 and 2035, outstripping U.S. natural gas demand growth over this period.[22] EIA further anticipates that net U.S. imports of natural gas will steadily decline over this period to 0.32 Tcf in 2035 (0.87 Bcf/d) from 2.64 Tcf (7.2 Bcf/d) in 2009.[23]

Notably, APGA fails to address or counter the market studies submitted with the September 7 Application that specifically consider future scenarios in which U.S. policymakers simultaneously promote the use of natural gas as a transportation fuel as well as a substitute for coal in power generation. Analytical work performed by EIA considering the market impacts of long-term subsidization of natural gas vehicles in the U.S. was combined with a scenario modeled by NCI in the NCI Report, in which aggressive greenhouse gas emission constraints were pursued, thereby promoting gas use in the electricity sector at the expense of coal. Under this demand "stress case", NCI determined that economically recoverable U.S. gas reserves remained more than sufficient over the long term to accommodate LNG exports from the Liquefaction Project and increased future consumption without adversely impacting consumer prices. APGA erroneously views its policy proscriptions as in conflict amidst a zero-sum game,

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[21] *See* EIA, Annual Energy Outlook 2011, Early Release Overview, Rep. No. DOE/EIA-0383ER(2011), Dec. 16, 2010, *available at* http://www.eia.gov/forecasts/aeo/pdf/0383er(2011).pdf. *See also EIA More Than Doubles Shale Reserve Estimate*, PLATTS GAS DAILY, Dec. 17, 2010, at 1.
[22] *EIA More Than Doubles Shale Reserve Estimate*, PLATTS GAS DAILY, Dec. 17, 2010, at 6.
[23] *See* http://www.eia.doe.gov/forecasts/aeo/excel/aeotab_13.xls.

when in fact the U.S. natural gas resource base is sufficiently vast to accommodate multiple future uses if policymakers were to pursue alternative paths.

D. Approval of the September 7 Application Will Produce Extensive Economic Benefits Undisputed by APGA

APGA does not dispute any of the economic benefits which will be associated with the Liquefaction Project. The Liquefaction Project will stimulate the national, regional and local economies through job creation, increased economic activity and tax revenues, both directly and indirectly. As discussed extensively in the September 7 Application, much of the technology, equipment and materials needed to construct the Liquefaction Project can be obtained from U.S. sources. The manufacturing and supply of the required materials will result in an investment of over $400 million per LNG train, which equates to over $1.6 billion U.S. sourced materials for the Liquefaction Project as a whole.[24] Moreover, the national economy would benefit indirectly from the Liquefaction Project's role in supporting the E&P chain for natural gas extraction. This indirect stimulus would have a profound multiplier effect due to the wages, taxes and lease payments involved in the natural gas supply chain. In this regard, design and construction of the Liquefaction Project is anticipated to result in the creation or continuation of approximately 3,000 engineering and construction jobs, and indirectly, 30,000 – 50,000 new U.S. jobs associated with natural gas upstream development.[25]

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[24] September 7 Application at 54.
[25] September 7 Application at 54–59.

IV. CONCLUSION

WHEREFORE, Sabine Pass Liquefaction respectfully requests that the DOE/FE consider and order action consistent with Sabine Pass Liquefaction's Answer and deny APGA's Out-of-Time Motion.

Respectfully submitted,

Lisa Tonery
Tania S. Perez
Rabeha Kamaluddin
Attorneys for
Sabine Pass Liquefaction, LLC

March 21, 2011

VERIFICATION

State of New York)

County of New York)

BEFORE ME, the undersigned authority, on this day personally appeared Lisa M. Tonery, who, having been by me first duly sworn, on oath says that she is the Attorney for Sabine Pass Liquefaction, LLC and is duly authorized to make this Verification; that she has read the foregoing instrument and that the facts therein stated are true and correct to the best of her knowledge, information and belief.

Lisa M. Tonery

SWORN TO AND SUBSCRIBED before me on the 21st day of March, 2011.

Linda Salas

Name: Linda Salas

Title: Notary Public

My Commission expires:

LINDA SALAS
Notary Public, State of New York
No. 01SA6172469
Qualified in Queens County
Commission Expires August 13, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at New York, N.Y. this 21st day of March, 2011.

DMcGeorge
Dionne McCallum-George
Legal Secretary on behalf of
Sabine Pass Liquefaction, LLC