

**RECEIVED**

By Docket Room at: 01-10-13  
@4:28PM

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

**IN THE MATTER OF:**

**CHENIERE MARKETING, LLC ) FE DOCKET NO. 12-97-LNG  
                                      )**

**ANSWER OF CHENIERE MARKETING, LLC TO  
MOTIONS TO INTERVENE, PROTESTS AND COMMENTS**

Pursuant to Sections 590.303(e) and 590.304(f) of the Department of Energy’s (“DOE”) regulations,<sup>1</sup> Cheniere Marketing, LLC (“CMI”) hereby submits this Answer to the Sierra Club’s Motion to Intervene, Protest, and Comments filed on December 26, 2012 (“Sierra Club Pleading”) and the American Public Gas Association’s (“APGA”) Motion for Leave to Intervene and Protest (“APGA Pleading”) also submitted on December 26, 2012. In support of this Answer, CMI states the following:

**I. BACKGROUND**

On August 31, 2012, CMI filed an application (“August 31 Application”) pursuant to Section 3 of the Natural Gas Act (“NGA”)<sup>2</sup> with the DOE, Office of Fossil Energy (“DOE/FE”) for long-term, multi-contract authorization to engage in exports of domestically produced liquefied natural gas (“LNG”) in an amount up to 782 million MMBtu per year, which is equivalent to approximately 767 billion cubic feet of natural gas per year, for a 22-year period, commencing the earlier of the date of first export or eight years from the date of issuance of the authorization requested herein. CMI is seeking authorization to export LNG from the proposed

<sup>1</sup> 10 C.F.R. §§ 590.303(e) and 590.304(f) (2012).

<sup>2</sup> 15 U.S.C. § 717b (2006).

Corpus Christi Liquefaction Project (“CCL Project”) to be located near Corpus Christi, Texas,<sup>3</sup> to any country with which the U.S. does not now or in the future 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.

Notice of the August 31 Application was published in the Federal Register on October 24, 2012 (“NOA”). The NOA provided, among other things, that protests, motions to intervene, requests for additional procedures and written comments be filed no later than 4:30 p.m. eastern time on December 24, 2012.<sup>4</sup> The Sierra Club Pleading and APGA Pleading were each filed on December 26, 2012, which DOE/FE has deemed timely-filed since the Federal Government was closed on December 24, 2012 by Executive Order, and December 25, 2012 was a federal holiday.<sup>5</sup>

---

<sup>3</sup> The CCL Project is being developed by CMI affiliate, Corpus Christi Liquefaction, LLC (“CCL”) and an interconnected interstate natural gas pipeline is being developed by a second affiliate, Cheniere Corpus Christi Pipeline, L.P. (“CCP”). On August 31, 2012, CCL filed an application with the Federal Energy Regulatory Commission (“FERC” or “Commission”) for authorization pursuant to Section 3(a) of the NGA to site, construct and operate the CCL Terminal facilities (the “CCL Terminal”), and CCP filed an application with FERC pursuant to Section 7(c) of the NGA to construct, own and operate the Corpus Christi Pipeline to connect the CCL Terminal facilities to interstate and intrastate natural gas supplies and markets (“FERC Application”). Prior to filing the FERC Application, CCL and CCP underwent the FERC’s mandatory pre-filing process. During the pre-filing process, FERC issued a Notice of Intent (“NOI”) to prepare an Environmental Assessment (“EA”) for the CCL Project, which was published in the Federal Register on June 8, 2012. That NOI establishes DOE/FE’s participation as a cooperating agency in the FERC’s environmental review process for the CCL Project. *See FERC Notice of Intent to Prepare an Environmental Assessment for the Planned Corpus Christi LNG Terminal and Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting*, 77 Fed. Reg. 34,034 (June 8, 2012). Subsequent to issuance of the NOI, FERC determined that an Environmental Impact Statement (“EIS”) rather than an EA would be prepared for the CCL Project.

<sup>4</sup> 77 Fed. Reg. 64,964 (Oct. 24, 2012).

<sup>5</sup> *See Memorandum for Heads of Executive Departments and Agencies* issued December 21, 2012 by the Office of Personnel Management stating that the President has issued an Executive Order excusing most executive branch non-Postal Service employees from duty on Monday, December 24, 2012, <http://chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=5212>; *see also Exec. Order No. 13633, Closing of Executive Departments and Agencies of the Federal Government on Monday, December 24, 2012*, 77 Fed. Reg. 76,339 (Dec. 28, 2012).

## II. ANSWER

As a preliminary matter, neither Sierra Club nor APGA has set forth any relevant studies or other evidence that approval of the August 31 Application is not consistent with the public interest. The arguments raised by Sierra Club and APGA consist almost entirely of a repetition of those raised previously in opposition to other proposed export applications, including that of CMI's affiliate, Sabine Pass Liquefaction, LLC ("Sabine Pass"), in FE Docket No. 10-111-LNG. Notably, these arguments were rejected by DOE/FE in approving the application of Sabine Pass to export domestic natural gas as LNG in *Order No. 2961* and *Order No. 2961-A*.<sup>6</sup>

### A. **Sierra Club and APGA Fail to Overcome the Presumption that the August 31 Application Is Consistent with the Public Interest**

In its pleading, Sierra Club wrongly states that "Section 3 of the Natural Gas Act provides that DOE/FE cannot authorize exports unless it finds the exports to be in the public interest."<sup>7</sup> Sierra Club misconstrues Section 3 of the NGA, which requires that DOE/FE authorize exports to a foreign country unless there is a finding on the public record that such exports "will not be consistent with the public interest."<sup>8</sup> Accordingly, Section 3 of the NGA

---

<sup>6</sup> See *Sabine Pass Liquefaction, LLC, Opinion and Order Conditionally Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations*, FE Docket No. 10-111-LNG, DOE/FE Order No. 2961 (May 20, 2011) ("*Order No. 2961*"); *Sabine Pass Liquefaction, LLC, Final Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations*, FE Docket No. 10-111-LNG, DOE/FE Order No. 2961-A (Aug. 7, 2012) ("*Order No. 2961-A*"). Neither APGA nor Sierra Club filed a timely motion to intervene and thus neither entity was granted intervenor status in DOE/FE Docket No. 10-111-LNG. In a March 25, 2011 order in that proceeding, DOE/FE denied APGA's motion for leave to intervene out-of-time but indicated that it would treat the arguments raised in APGA's protest as non-intervenor comments. Accordingly, APGA's comments were considered by DOE/FE in *Order No. 2961*. See *Order No. 2961*, at pp. 2, 20-23 and 30. In *Order No. 2961-A*, DOE/FE denied Sierra Club's motion to intervene out-of-time and, in doing so, found that "based on a review of the complete record in the FERC proceeding and the arguments raised in the instant proceeding by the Sierra Club, that there is no need or sufficient justification to supplement the environmental review conducted by the FERC." See *Order No. 2961-A*, at pp. 5 and 9-28.

<sup>7</sup> Sierra Club Pleading at 3.

<sup>8</sup> 15 U.S.C. § 717b(a). See, e.g., *Order No. 2961*, at p. 2 ("[f]ollowing a review of the record in this proceeding, DOE/FE has concluded that the opponents of the application have not demonstrated that a conditional grant of the requested authorization for a term of 20 years would be inconsistent with the public interest.").

creates a statutory presumption *in favor of* approval of the August 31 Application, which opponents, such as Sierra Club and APGA, bear the burden of overcoming.<sup>9</sup>

The APGA Pleading exhibits a similar misunderstanding of the legal and policy parameters within which DOE/FE reviews applications under NGA Section 3. In this regard, APGA requests that DOE/FE abandon its policy of minimizing federal control and involvement in energy markets by restricting exports and tailoring its export policies to benefit a particular segment of the U.S. marketplace.<sup>10</sup> However, such preferential treatment would adversely and discriminatorily impact other market participants and would contradict DOE/FE's general policy of respecting freely negotiated contracts entered into by market participants. In evaluating export applications, DOE/FE has noted repeatedly that it applies the principles described in DOE Delegation Order No. 0204-111 ("*Policy Guidelines*")<sup>11</sup> which focuses on the domestic need for the gas and presumes the normal functioning of the competitive market will benefit the public.

In this regard, the *Policy Guidelines* provide that:

the government, while ensuring that the public interest is adequately protected, should not interfere with buyers' and sellers' negotiation of the commercial aspects of import [and export] arrangements. The thrust of this policy is to allow the commercial parties to structure more freely their trade arrangements, tailoring them to the markets served. Thus, with the presumption that commercial parties will develop competitive arrangements, parties opposing an import [or export] will bear the burden of demonstrating that the import [or export] arrangement is not consistent with the public interest.<sup>12</sup>

---

<sup>9</sup> *Phillips Alaska Natural Gas Corp., Order Extending Authorization to Export Liquefied Natural Gas from Alaska*, FE Docket No. 96-99-LNG, DOE/FE Opinion and Order No. 1473, at p. 13 n. 42 (Apr. 2, 1999) ("*Order No. 1473*") (citing *Panhandle Producers and Royalty Owners Ass'n v. ERA*, 822 F.2d 1105, 1111 (D.C. Cir. 1987)).

<sup>10</sup> APGA asserts, among other things, that "DOE/FE should pursue policies that create new manufacturing jobs." APGA Pleading at 12. It further alleges that rather than authorizing exports, "the U.S. should pursue policies that allow industry to invest in natural-gas dependent manufacturing." *Id.*

<sup>11</sup> *Policy Guidelines and Delegation Orders Relating to the Regulation of Imported Natural Gas*, 49 Fed. Reg. 6,684 (Feb. 22, 1984).

<sup>12</sup> *Id.* at 6,685.

The analysis provided in the recently released study prepared by NERA Economic Consulting, *Macroeconomic Impacts of LNG Exports from the United States*, commissioned by DOE to inform its decisions related to how U.S. LNG exports could affect the public interest (“NERA Study”),<sup>13</sup> reinforces DOE/FE’s continued reliance on the free market policies embodied in the *Policy Guidelines*. In concluding that the benefits of allowing exports are overwhelmingly positive for the U.S. economy, the NERA Study states “[t]his is exactly the outcome that economic theory describes when barriers to trade are removed.”<sup>14</sup>

In addition to being inconsistent with the *Policy Guidelines*, it is not DOE/FE’s role to favor one particular use of natural gas versus other uses or to otherwise select winners among various market sectors. Rather, DOE/FE is charged with, among other things, determining if market-oriented arrangements engaged in freely by market participants, as proposed by CMI, are inconsistent with the public interest. As CMI demonstrated in the August 31 Application, the longstanding principles of minimizing federal interference and involvement in natural gas markets, as articulated in the *Policy Guidelines* and reiterated by DOE/FE in *Order No. 2961*, are particularly relevant in the context of the instant proceeding and existing and projected natural gas market conditions of abundant domestic supply. Econometric market studies, third-party expert reservoir analysis, and other data presented in the August 31 Application all demonstrate limited impacts on domestic natural gas prices and tremendous benefits to the U.S. economy associated with the proposed export of natural gas as LNG. Sierra Club and APGA ask DOE/FE to deny the August 31 Application without presenting any countervailing studies or other

---

<sup>13</sup> See *Energy Department Releases Study on Natural Gas Exports, Invites Public Comment*, <http://www.fossil.energy.gov/programs/gasregulation/LNGStudy.html>; see also *NERA Consulting, Macroeconomic Impacts of LNG Exports from the United States* (Dec. 2012), [http://www.fossil.energy.gov/programs/gasregulation/reports/nera\\_lng\\_report.pdf](http://www.fossil.energy.gov/programs/gasregulation/reports/nera_lng_report.pdf). Cheniere Energy, Inc., corporate parent to CMI and its affiliates, intends to submit formal comments to DOE regarding the NERA Study consistent with the procedures established by DOE.

<sup>14</sup> NERA Study at 1.

evidence sufficient to rebut the benefits associated with exports as detailed by CMI, and accordingly, these requests must be denied.

**B. Sierra Club’s Environmental Arguments Are Misplaced and Should Be Rejected**

The bulk of the Sierra Club Pleading is focused on issues well beyond the scope of this proceeding, including environmental issues associated with the “construction and operation of the terminal, liquefaction facilities, and any other associated infrastructure,”<sup>15</sup> as well as environmental issues associated with the presumption of induced shale gas production, and all presumptive direct, indirect and cumulative impacts associated with, not just the August 31 Application, but all proposed export projects. Sierra Club’s position is untenable and must be rejected for the reasons discussed below.

**1. FERC Is the Lead Federal Agency for Purposes of NEPA**

Under Section 3(e)(1) of the NGA,<sup>16</sup> FERC has the exclusive authority to approve or deny an application for the siting, construction or operation of an LNG terminal. Accordingly, it is FERC, and not DOE/FE, that will review the environmental issues associated with the siting, construction and operation of the CCL Project. The Energy Policy Act of 2005 (“EPAAct 2005”)<sup>17</sup> amended the NGA to streamline the process for reviewing and approving natural gas projects, including LNG facilities. It expressly provided FERC with lead agency status for the purposes of coordinating *all* applicable federal authorizations<sup>18</sup> and complying with the National Environmental Policy Act (“NEPA”).<sup>19</sup> Consistent with that mandate, and as reflected in the NOI, DOE/FE will participate as a cooperating agency in the FERC’s environmental review process for the CCL Project.

---

<sup>15</sup> Sierra Club Pleading at 4.

<sup>16</sup> 15 U.S.C. § 717b(e)(1).

<sup>17</sup> *Energy Policy Act of 2005*, Pub. L. No. 109-58, 119 Stat. 594 (2005).

<sup>18</sup> Pub. L. No. 109-58, § 313, 119 Stat. 594, 688.

<sup>19</sup> *Nat’l Environmental Policy Act of 1969*, 42 U.S.C. § 4321 *et seq.* (2006).

DOE/FE has adopted regulations of the Council on Environmental Quality (“CEQ”) that govern its role as a cooperating agency in the NEPA process.<sup>20</sup> These regulations provide that “DOE *shall* cooperate with the other agencies in developing environmental information.”<sup>21</sup> These regulations further provide for DOE/FE to adopt FERC’s findings so long as FERC has satisfactorily addressed any comments raised by DOE/FE during the cooperating agency process.<sup>22</sup>

The lead/cooperating agency process exists to avoid duplication of efforts within the Federal Government. A cooperating agency such as DOE/FE provides its input through that process by participating in the review and submitting comments before the lead agency issues its NEPA report, which in this case will be an EIS.<sup>23</sup> Once the report has been issued, the role of the cooperating agency is normally limited. As a cooperating agency under NEPA, DOE/FE “may adopt without recirculating” FERC’s EIS if, “after an independent review,” DOE/FE “concludes that its comments and suggestions have been satisfied.”<sup>24</sup>

Sierra Club states that “if the NEPA analysis FERC prepares in its capacity as lead agency is inadequate to fully inform DOE/FE’s decision or discharge DOE/FE’s NEPA obligations, DOE/FE must prepare a separate EIS.”<sup>25</sup> Because DOE/FE is a cooperating agency in the FERC NEPA process, it is unlikely that the EIS will be inadequate to inform DOE/FE’s decision or to discharge its NEPA obligations. Moreover, Sierra Club’s assertion that DOE/FE

---

<sup>20</sup> See 10 C.F.R. § 1021.103.

<sup>21</sup> See 10 C.F.R. § 1021.342; see also 40 C.F.R. §§ 1501.6 and 1508.5 (2012) (requiring that federal agencies responsible for preparing NEPA analyses and documentation do so in cooperation with state and local governments and other agencies with jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major federal action significantly affecting the quality of the human environment). Upon request of the lead agency, any other federal agency which has jurisdiction by law shall be a cooperating agency. See 40 C.F.R. § 1501.6.

<sup>22</sup> See 40 C.F.R. § 1506.3(c).

<sup>23</sup> See *id.*

<sup>24</sup> *Id.* See also *Guidance Regarding NEPA Regulations*, 48 Fed. Reg. 34,263 at 34,265-66 (July 28, 1983).

<sup>25</sup> Sierra Club Pleading at 8.

should undertake its own independent environmental review process must be rejected as the very type of duplicative agency action that both EAct 2005 and the CEQ regulations seek to eliminate.

## 2. Issuance of a Conditional Order Is Appropriate in This Proceeding

CMI has requested that DOE/FE issue a conditional order pending completion of the NEPA process for the CCL Project by FERC and subsequent issuance of a record of decision by DOE/FE. Sierra Club takes issue with this request, asserting that DOE/FE may not issue a conditional order authorizing the export of LNG pending completion of the NEPA review process for the CCL Project.<sup>26</sup> While acknowledging that DOE/FE has the authority to issue conditional orders, Sierra Club nonetheless states that agencies are prohibited from taking “any action on a proposal prior to completion of NEPA review if that action tends to ‘limit the choice of reasonable alternatives.’”<sup>27</sup> Sierra Club’s position is inconsistent with Section 590.402 of the DOE regulations which by its terms provides that the Assistant Secretary may issue conditional orders.<sup>28</sup> Moreover, Sierra Club provides no convincing rationale as to why issuance of a conditional order (which by its terms explicitly authorizes no final action) should be disallowed,

---

<sup>26</sup> *Id.* at 15-17.

<sup>27</sup> *Id.* at 16 n. 20.

<sup>28</sup> “The Assistant Secretary may issue a conditional order at any time during a proceeding prior to issuance of a final opinion and order. The conditional order shall include the basis for not issuing a final opinion and order at that time and a statement of findings and conclusions. The findings and conclusions shall be based solely on the official record of the proceeding.” 10 C.F.R. § 590.402. *See also Ocean State Power, Final Order Granting Authorization to Import Natural Gas from Canada*, ERA Docket No. 86-62-NG, DOE/ERA Opinion and Order No. 243-A, 1 ERA ¶ 70,810 (Sept. 14, 1988) (granting the first conditional authorization by predecessor agency, the Economic Regulatory Administration (“ERA”), to import natural gas from Canada, conditioned upon a final opinion and order from ERA after review by DOE of the final EIS being prepared for the Ocean State Project by FERC); *see also PUC of Calif. v. FERC*, 900 F.2d 269, 282 (D.C. Cir. 1990) (stating that an agency can make a final decision, so long as it assessed the environmental data before the decision’s effective date).



especially given that DOE/FE has issued conditional orders subject to satisfactory environmental review in circumstances similar to those in this matter.<sup>29</sup>

There is no reason to conclude, as Sierra Club wrongly does, that issuance of a conditional order by DOE/FE will impede FERC, the lead agency in the NEPA review process. In this regard, FERC previously has explained its obligation under the NGA to review alternatives in conjunction with the NEPA process as follows: “the Commission does not direct the development of the gas industry’s infrastructure, neither on a broad regional basis nor in the design of specific projects. Instead, we respond when an application is presented to us . . . . Under the NGA, we consider alternatives to a proposed project in determining whether a proposal is in the public interest. Under NEPA, we take a hard look at alternative means to fulfill the purpose and meet the need described in the application and assess the environmental impacts of each alternative. If we were to find the proposed project to be environmentally unacceptable, we would reject the application.”<sup>30</sup>

### **3. There Is No Basis for Preparation of a Programmatic EIS**

Equally flawed is Sierra Club’s contention that DOE/FE should prepare a programmatic EIS to consider the direct and indirect impacts of all proposed export projects. The DOE regulations define a programmatic EIS as a “broad-scope EIS . . . that identifies and assesses the environmental impacts of a DOE program.”<sup>31</sup> Courts have stated that a programmatic EIS reflects the “broad environmental consequences attendant upon a wide-ranging federal program.”<sup>32</sup> The rationale for preparation of a programmatic EIS is that a coordinated federal

---

<sup>29</sup> See, e.g., *Order No. 2961; Rochester Gas and Electric Corp., Conditional Order Granting Long-Term Authorization to Import Natural Gas from Canada and Granting Intervention*, FE Docket No. 90-05-NG, DOE/FE Opinion and Order No. 503 (May 16, 1991).

<sup>30</sup> *Tex. Eastern Transmission, LP, Order Denying Requests for Rehearing, Reconsideration, Stay and Late Intervention*, 141 FERC ¶ 61,043 at PP 25-26 (2012) (“*Texas Eastern*”).

<sup>31</sup> 10 C.F.R. § 1021.104(b).

<sup>32</sup> See *Fndn on Econ. Trends v. Heckler*, 756 F.2d 143, 159 (1985).

program is likely to generate disparate but related impacts.<sup>33</sup> Numerous companies have proposed to site, construct and operate LNG export facilities and their associated filings are pending before FERC and DOE/FE; however, these projects are not part of a coordinated federal program, and individually are not part of an orchestrated series of projects directed by a single decision-maker such as the Federal Government. Importantly, FERC does not “direct the development” of LNG or natural gas infrastructure on a regional or national basis, and FERC’s review and approval of projects under the NGA does not constitute a “coordinated federal program.”<sup>34</sup> Consequently, insofar as the August 31 Application is not part of a coordinated federal program, there is no basis for preparing a programmatic EIS and Sierra Club’s request that DOE/FE do so must be rejected.

#### **4. Sierra Club’s Position that Induced Production Must Be Considered in the NEPA and NGA Analyses Should Be Rejected**

Consistent with its position in other proceedings concerning proposals to export domestic natural gas production, including *Sabine Pass*, Sierra Club alleges that DOE/FE must consider the environmental effects of hydraulic fracturing and induced production in its review of the August 31 Application. Both FERC and DOE/FE rejected this position in the *Sabine Pass* proceeding.<sup>35</sup> Moreover, FERC has had multiple opportunities to consider Sierra Club’s argument that the environmental impacts of induced production must be considered in the cumulative impacts analysis for proposed natural gas infrastructure projects, and has consistently

---

<sup>33</sup> *Id.* at 158.

<sup>34</sup> See *Texas Eastern*, *supra* note 30.

<sup>35</sup> See *Sabine Pass Liquefaction, LLC, Order Granting Section 3 Authorization*, 139 FERC ¶ 61,039 at PP 94-99 (2012); see also *Order No. 2961-A*, at p. 28 (“DOE/FE accepts and adopts the Commission’s determination that induced shale gas production is not a reasonably foreseeable effect for purposes of NEPA analysis, for the reasons given by the Commission.”).

rejected this position on the grounds that the shale development and its associated effects were not sufficiently causally related to the proposed project.<sup>36</sup>

In one of those cases, *Texas Eastern*, the Commission explained that it did not view its determination that there is no causal relationship between a proposed pipeline project and the development of the shale reserves as inconsistent with its obligation under NEPA to consider the incremental impact a proposed action will have “when added to other past, present, and reasonably foreseeable future actions.”<sup>37</sup> In support of its position, FERC cited to *Sierra Club v. Clinton*, 746 F. Supp. 2d 1025, 1044 (D. Minn. 2010) (“*Sierra Club*”) explaining, “[i]n the *Sierra Club* case and this case, the new pipeline was found to be separated both physically (with hundreds of miles between the project site and production fields) and in terms of the pipeline’s influence on production activities. Accordingly, finding no cause and effect is a shorthand way of saying that the pipeline and production are not related ‘actions that will have cumulative or synergistic environmental impact upon a region.’ If two separate actions may proceed independently, the impacts of these separate actions should not be joined in a cumulative impacts analysis.”<sup>38</sup>

Similarly, it is reasonable to anticipate that natural gas production in the U.S. would continue to increase in the absence of proposed LNG export projects, including the CCL Project – either in response to increases in gas-fired power generation, for use as a motor vehicle fuel, chemicals production, pipeline exports to Canada or Mexico or for any other source of increased demand. Accordingly, it is not reasonable to link the environmental impacts associated with

---

<sup>36</sup> See *Tex. Eastern Transmission, LP, Order Issuing Certificates and Approving Abandonment*, 139 FERC ¶ 61,138 at PP 70-73 (2012); see also *Tenn. Gas Pipeline Co., L.L.C., Order Issuing Certificate and Approving Abandonment*, 139 FERC ¶ 61,161 at PP 182-193 (2012); *Cent. N.Y. Oil & Gas Co., Order Issuing Certificate*, 137 FERC ¶ 61,121 at PP 81-107 (2011), *reh’g denied*, 138 FERC ¶ 61,104 at PP 33-56 (2012), *aff’d*, *Coalition for Responsible Growth and Res. Conservation v. FERC*, No. 12-566, 2012 U.S. App. LEXIS 11847 (2d Cir. June 12, 2012).

<sup>37</sup> *Texas Eastern* at P 41.

<sup>38</sup> *Id.* (footnotes omitted).

natural gas production across the country to the environmental review of the CCL Project and CMI's August 31 Application. Just as FERC found in *Sabine Pass* that induced production was neither "reasonably foreseeable" nor an "effect" for purposes of a cumulative impacts analysis within the meaning of the CEQ regulations,<sup>39</sup> the same holds true here and, accordingly, Sierra Club's position should again be rejected.

**C. APGA's Arguments that Exports Will Increase Natural Gas Prices Are Wholly Unsupported and its Other Arguments Are Irrelevant to DOE/FE's Consideration of the August 31 Application**

The APGA Pleading takes the inconsistent position that CMI's proposed exports will both "increase domestic natural gas and electricity prices,"<sup>40</sup> while also claiming that CMI's "plan to export natural gas will not prove economically viable."<sup>41</sup> The APGA Pleading espouses the wholly unsupported position that the export of natural gas as LNG is not in the public interest because exports will lead to potentially significant price increases.<sup>42</sup> APGA claims that such potential price increases will (i) jeopardize the transition away from carbon-intensive (e.g., coal-fired) electric generation, (ii) inhibit efforts to foster the use of natural gas as a transportation fuel, which in turn, will jeopardize U.S. energy independence, and (iii) detrimentally impact "a U.S. manufacturing renaissance."<sup>43</sup> APGA's focus on price levels is misplaced. As discussed above in II.A, in evaluating an export application, DOE/FE focuses primarily on the domestic need for the gas to be exported and the *Policy Guidelines*, which provide that "the market, not government should determine the price."<sup>44</sup> The *Policy Guidelines* indicate that the Federal Government's "primary responsibility in authorizing imports [or exports] should be to evaluate

---

<sup>39</sup> *Sabine Pass Liquefaction, LLC, Order Granting Section 3 Authorization*, 139 FERC ¶ 61,039 at P 96 (2012).

<sup>40</sup> APGA Pleading at 5.

<sup>41</sup> *Id.* at 4.

<sup>42</sup> *Id.* at 3-4.

<sup>43</sup> *Id.* at 4.

<sup>44</sup> *Policy Guidelines* at 6,685.

the need for the gas”<sup>45</sup> and that “the sale of gas in volumes and at prices responsive to market demands largely meets the public interest test.”<sup>46</sup> APGA’s proposal to differentiate acceptable and unacceptable uses for natural gas 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.<sup>47</sup>

APGA further bases its request to deny the August 31 Application on the premise that the U.S. has an opportunity “to make real progress towards energy independence” and that exporting natural gas will impede those goals.<sup>48</sup> To this end, APGA predicts the development in the market of alternatives to exports occurring as a result of lower natural gas prices, including the use of natural gas as a substitute for coal in power generation, a replacement transportation fuel for gasoline, a primary feedstock for conversion into substitute petroleum products; and as fuel and feedstock source for other industrial and manufacturing applications. CMI notes that in raising these proposals, APGA fails to demonstrate that the domestic natural gas resource base is constrained in a manner that would make these alternatives and natural gas exportation, as proposed in the August 31 Application, mutually exclusive. More fundamentally, these alternatives forecasted by APGA represent policy proposals that are not relevant to DOE/FE’s statutory dictate in evaluating the August 31 Application. As discussed above in II.A, it is not DOE/FE’s role to favor one particular use of natural gas over another or to otherwise select winners among various market sectors. While APGA is at liberty to advocate elected officials

---

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 6,687.

<sup>47</sup> See, e.g., *Order No. 1473*, at p. 51 (stating that the public interest is generally best served by a free trade policy); *ConocoPhillips Alaska Natural Gas Corp., Order Granting Authorization to Export Liquefied Natural Gas from Alaska*, FE Docket No. 07-02-LNG, DOE/FE Opinion and Order No. 2500, at pp. 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).

<sup>48</sup> APGA Pleading at 18.

for suggested changes in public policy, its views in this regard are neither relevant to DOE/FE's deliberations nor have any bearing on DOE/FE's review of the August 31 Application.

APGA cites the U.S. Energy Information Administration's ("EIA") preliminary Annual Energy Outlook 2013<sup>49</sup> ("2013 AEO") forecast released subsequent to the filing of the August 31 Application, which shows upward revisions in future demand expectations, as evidence that future domestic demand for natural gas may grow, and requests that DOE/FE consider the ramifications of EIA's 2013 AEO forecast in its evaluation of the August 31 Application.<sup>50</sup>

CMI concurs with APGA's observation that EIA's latest 2013 AEO forecast is relevant to the proceedings and should be given weight in deliberations by DOE/FE. In this regard, CMI believes that DOE/FE must consider the 2013 AEO release in its entirety, with a focus on those findings that are relevant to projected quantities of both supply and demand in the U.S. Specifically, the EIA's latest forecast predicts that domestic natural gas production will grow at nearly twice the rate as demand through 2035, increasing by 3.4 trillion cubic feet ("Tcf") as compared to the *Annual Energy Outlook 2012* ("2012 AEO");<sup>51</sup> and that domestic supply will exceed consumption by 2020, resulting in the U.S. becoming a net exporter of natural gas.<sup>52</sup> Simultaneously, the 2013 AEO projects an increase of 0.75 Tcf in commercial and industrial demand in 2035 as compared to the 2012 AEO, and an increase of 0.48 Tcf in projected natural gas consumption for power generation in 2035. The 2013 AEO forecast lends support to the fact that the U.S. natural gas resource base is growing, and that recoverable resources are more than sufficient to meet future domestic needs as well as expanded trade in international markets over

---

<sup>49</sup> U.S. Energy Information Administration, *Annual Energy Outlook 2013 Early Release* (Dec. 5, 2012), [http://www.eia.gov/forecasts/aeo/er/pdf/0383er\(2013\).pdf](http://www.eia.gov/forecasts/aeo/er/pdf/0383er(2013).pdf)

<sup>50</sup> APGA Pleading at 7.

<sup>51</sup> U.S. Energy Information Administration, *Annual Energy Outlook 2012 Reference Case Table 13. Natural Gas Supply, Disposition and Prices*, [http://www.eia.gov/forecasts/archive/aeo12/data.cfm?filter=natural\\_gas#natural\\_gas](http://www.eia.gov/forecasts/archive/aeo12/data.cfm?filter=natural_gas#natural_gas). See 2013 AEO Table 13 Reference Case, <http://www.eia.gov/forecasts/aeo/er/pdf/tbla13.pdf>

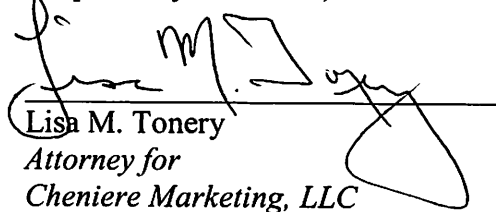
<sup>52</sup> See 2013 AEO at 1.

the long term. These facts are relevant to DOE/FE's review and support approval of the August 31 Application.

**III. CONCLUSION**

In light of (i) the statutory presumption in favor of authorizing exports, (ii) DOE/FE's prior rejection in *Order No. 2961* and *Order No. 2961-A* of similar arguments raised by Sierra Club and APGA in their respective pleadings, and (iii) the failure of Sierra Club and APGA to meet their burden to proffer evidence that CMI's export proposal as set forth in the August 31 Application is inconsistent with the public interest, DOE/FE should dismiss the arguments raised by Sierra Club and APGA and grant the August 31 Application.

Respectfully submitted,



Lisa M. Tonery  
*Attorney for  
Cheniere Marketing, LLC*

Fulbright & Jaworski L.L.P.  
666 Fifth Avenue  
New York, New York 10103  
(212) 318-3009

Dated: January 10, 2013

**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, NY this 10<sup>th</sup> day of January, 2013.



Dionne McCallum-George  
*Legal Secretary on behalf of  
Cheniere Marketing, LLC*



**VERIFICATION**

State of Texas )

County of Harris )

Pursuant to 10 C.F.R. § 590.103(b), Davis Thames, being duly sworn, affirms that he is the President of Cheniere Marketing, LLC and is duly authorized to make this Verification; that he has read the foregoing document and that all facts therein stated are true and correct to the best of his knowledge, information and belief.



Davis Thames

SWORN TO AND SUBSCRIBED before me on the 10<sup>th</sup> day of January, 2013.



Name: Erika Silva

Title: Notary Public

My Commission expires:

May 20, 2015