

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

**Southern LNG Company, L.L.C.**

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**FE Docket No. 12-100-LNG**

**ANSWER OF SOUTHERN LNG COMPANY, L.L.C. TO MOTIONS  
TO INTERVENE, PROTESTS, AND COMMENTS**

Pursuant to Section 590.303(e) of the Department of Energy's ("DOE") regulations<sup>1</sup> and the Notice of Application published in the *Federal Register* on October 17, 2012,<sup>2</sup> Southern LNG Company, L.L.C. ("SLNG") submits this answer ("Answer") to motions to intervene, comments and protests submitted in this proceeding on December 17, 2012 by: (1) the Sierra Club;<sup>3</sup> and (2) the American Public Gas Association ("APGA")<sup>4</sup> (collectively, "Protestors"). Both Protesters challenge SLNG's license application to export domestically produced natural gas as liquefied natural gas ("LNG") from the existing Elba Island terminal located in Chatham County, Georgia ("SLNG Export Project" or "Project"), to any country (i) with which the United States does not have a Free Trade Agreement ("FTA") requiring national treatment for trade in natural gas, (ii) which has or will develop the capacity to import LNG delivered by ocean-going carrier, and (iii) with which trade is not prohibited by United States law or policy. In support of this Answer, SLNG states the following:

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

<sup>2</sup> 77 Fed. Reg. 63,806 (Oct. 17, 2012).

<sup>3</sup> Sierra Club's Motion to Intervene, Protest, and Comment, FE Docket No. 12-100-LNG (Dec. 17, 2012) ("Sierra Club Protest").

<sup>4</sup> Motion for Leave to Intervene and Protest of the American Public Gas Association, FE Docket 12-100-LNG (Dec. 17, 2012) ("APGA Protest").

## I. PROCEDURAL BACKGROUND

On August 31, 2012, SLNG filed an application pursuant to Section 3 of the Natural Gas Act (“NGA”)<sup>5</sup> with the DOE, Office of Fossil Energy (“DOE/FE”) for long-term, multi-contract authorization to export up to 4 million tons per annum of liquefied natural gas (“LNG”), which is approximately equal to 0.5 billion cubic feet of gas per day (“Bcf/d”), produced from domestic sources for a 20-year period commencing on the earlier of the date of the first export or ten years from the date the authorization is granted (“SLNG Application”). SLNG requested the authorization both on its own behalf and as agent for other parties who themselves hold title to the LNG at the time of export. This Application was submitted as a companion to SLNG’s application for authorization to export LNG to FTA countries. The DOE/FE granted this authorization in Order No. 3106.<sup>6</sup>

Notice of the SLNG’s Application was published on October 17, 2012, and provided, among other things, that protests, motions to intervene, requests for additional procedures and written comments must be filed no later than December 17, 2012.<sup>7</sup>

On December 5, 2012, SLNG filed to initiate the pre-filing process at the Federal Energy Regulatory Commission (“FERC” or “Commission”) in Docket No. PF13-3. SLNG is working with FERC to provide additional information so that pre-filing may commence in the early part of 2013.

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<sup>5</sup> 15 U.S.C. § 717b (2006).

<sup>6</sup> SLNG has received authorization from the DOE to export LNG to FTA countries. *Southern LNG Company, L.L.C.*, FE Docket No. 12-54-LNG, Order No. 3106 (June 15, 2012).

<sup>7</sup> 77 Fed. Reg. 63,806 (Oct. 17, 2012).

## II. LEGAL STANDARD

Pursuant to Section 3 of the NGA,<sup>8</sup> DOE/FE is required to authorize exports to a foreign country unless there is a finding that such exports “will not be consistent with the public interest.”<sup>9</sup> Specifically, Section 717b(a) of the NGA states in relevant part:

(a) Mandatory authorization order

[N]o person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest.<sup>10</sup>

In applying this statute, DOE/FE has consistently found that Section 717b(a) creates a rebuttable presumption that proposed exports of natural gas are in the public interest.<sup>11</sup> For that reason, DOE/FE must grant the export application unless opponents of an export authorization make an affirmative showing based on evidence in the record that the export would be inconsistent with the public interest.<sup>12</sup>

For applications to export LNG to non-FTA countries, the DOE conducts a full public interest review. The DOE/FE has explained that its public interest review focuses on the

domestic need for the gas; whether the proposed exports pose a threat to the security of domestic natural gas supplies; and any other issues determined to be appropriate, including whether the arrangement is consistent with DOE’s policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade agreements.<sup>13</sup>

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<sup>8</sup> 15 U.S.C. § 717b (2006).

<sup>9</sup> 15 U.S.C. § 717b(a).

<sup>10</sup> *Id.* (emphasis added).

<sup>11</sup> *See, e.g., Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG, Order No. 2961, at 28 (May 20, 2011 (“DOE/FE Order No. 2961”).

<sup>12</sup> *Id.* at 28 n.38.

<sup>13</sup> DOE/FE Order No. 2961 at 29.

Further, 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"),<sup>14</sup> (which have been held to apply to the export of natural gas<sup>15</sup> and which presume that the normal functioning of the competitive market will benefit the public). Although DOE Delegation Order No. 0204-111 is no longer in effect, DOE/FE's review of export applications in decisions under current delegated authority has continued to focus on the domestic need for natural gas proposed to be exported; whether the proposed exports pose a threat to the security of domestic natural gas supplies; and any other issue DOE/FE determines to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements.<sup>16</sup> Indeed the Policy Guidelines provide that "the policy cornerstone of the public interest standard is competition. Competitive [export] arrangements are an essential element of the public interest, and natural gas [exported] under agreements that provide for the sale of gas in volumes and at prices responsive to market demands largely meets the public interest test."<sup>17</sup>

In granting its most recent authorization to export LNG to non-FTA countries, DOE has indicated that the following additional considerations are relevant in determining whether proposed exports are in the public interest: whether the exports will be beneficial for regional

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<sup>14</sup> *Policy Guidelines and Delegation Orders Relating to the Regulation of Imported Natural Gas*, 49 Fed. Reg. 6,684 (Feb. 22, 1984).

<sup>15</sup> *Phillips Alaska National Gas Corporation and Marathon Oil Co.*, FE Order No. 1473 (Apr. 2, 1999), 2 FE 70317 (1999).

<sup>16</sup> In this regard, in DOE/FE Order No. 2961, the first and currently only, DOE/FE order authorizing exports of lower-48 domestically produced LNG to non-FTA countries, DOE/FE reinforced that although DOE Delegation Order No. 0204-111 is no longer in effect, it continues to focus on the principles set forth therein in reviewing export application. *See* DOE/FE Order No. 2961 at 29.

<sup>17</sup> Policy Guidelines at 7.

economies, the extent to which the exports will foster competition and mitigate trade imbalance with the foreign recipient nations, and the degree to which the exports would encourage efficient management of United States domestic natural resources.<sup>18</sup> As discussed below, the export of domestically produced LNG as proposed in the SLNG Application satisfies each of these considerations, and the Protestors have failed to make an affirmative showing that the Project will be inconsistent with the public interest.

### **III. ANSWER TO APGA MOTION TO INTERVENE AND PROTEST**

#### *A. Overview of APGA's Motion to Intervene and Protest*

APGA states that it is a national association of natural gas distribution companies who are “active participants in the domestic market for natural gas where they secure the supplies of natural gas to serve their end users.”<sup>19</sup> APGA then outlines two main concerns: (1) that the Project is inconsistent with the public interest because domestic natural gas prices will increase; and (2) that the Project will eventually prove uneconomical because domestic and international prices will converge.<sup>20</sup> For its first concern, APGA points to the January 2012 study published by the U.S. Energy Information Administration, *Effect of Increased Natural Gas Exports on Domestic Energy Markets* (“EIA Study”) and the recently-issued NERA Economic Consulting study, *Macroeconomic Impacts of LNG Exports from the United States*, published on Dec. 3,

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<sup>18</sup>DOE/FE Order No. 2961 at 34-38. The Federal Register Notice inviting comments on the recently published NERA Study solicited comments “to help inform the DOE in its public interest determinations....” 77 Fed. Reg. 73,629 (Dec. 11, 2012). According to the notice, comments must be limited to the results and conclusions of the report and on the factors evaluated. Those factors included “domestic energy consumption, production, and prices, and particularly the macroeconomic factors identified in the NERA analysis, including Gross Domestic Product (GDP), welfare analysis, consumption, U.S. economic sector analysis, and U.S. LNG export feasibility analysis, and any other factors included in the analyses.” *Id.* DOE also sought comments on the feasibility of various scenarios used in both analyses. *Id.*

<sup>19</sup> APGA Protest at 2.

<sup>20</sup> *Id.* at 6-14, 15-18.

2012 (“NERA Study”) as evidence that natural gas prices will increase. In fact, APGA erroneously asserts that because the studies rely on out-of-date data, prices will rise to levels beyond the estimates in the above studies.<sup>21</sup> APGA then claims that as a result of these higher prices, economically vulnerable households will suffer, growth of industries reliant on natural gas will be suppressed, and the U.S.’s transition away from coal-burning generation will be threatened.<sup>22</sup> APGA makes these statements despite the fact that it offers little to no evidence to support these claims.<sup>23</sup> For APGA’s second issue, it expresses concern for the economic viability of the Project by explaining that U.S. and foreign natural gas prices will converge through the development of unconventional natural gas resources in other countries.

*B. APGA’s Motion to Intervene Should be Denied*

The DOE regulations permit any person who seeks to become a party to a proceeding to file a motion to intervene “which sets out clearly and concisely the facts upon which the petitioner’s claim of interest is based.”<sup>24</sup> APGA attempts to comply with this requirement but ultimately fails. The APGA claims a broader interest in seeking to prevent any increase to

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<sup>21</sup> APGA Protest at 8.

<sup>22</sup> APGA erroneously states that “EPA’s new greenhouse gas standards for new electric generators virtually ensure that new coal plants will not be constructed to replace those that are retired” (citing 77 C.F.R. [sic] 22392 (Apr. 13, 2012)). APGA Protest at 9. At this time, EPA has only proposed regulations for the greenhouse gas emissions from new electric generation units (“EGUs”). 77 Fed. Reg. 22,392 (Apr. 13, 2012). It is entirely speculative to try to predict whether EPA will ever adopt this proposal or the requirements that may be in a final rule for new EGUs. *Las Brisas Energy Center, LLC v. U.S.E.P.A.*, No. 12-1248, Respondent EPA’s Motion to Dismiss Petitions for Lack of Subject-Matter Jurisdiction at 1 (filed Aug. 9, 2012) (“Indeed, while EPA could adopt the proposal, it also remains a possibility – until EPA makes a final determination – that the Agency could choose *not* to adopt the proposal.”).

Similarly, it is inaccurate for APGA to state that “new environmental regulations will soon force coal retirements.” APGA Protest at 13. EPA has not adopted new greenhouse gas standards for existing EGUs and the proposed rule for new EGUs is still under agency review. 77 Fed. Reg. 22,392 (Apr. 13, 2012). Therefore, it is entirely premature to speculate about whether any coal-fired EGUs will need to be retired to comply with greenhouse gas regulations.

<sup>23</sup> APGA Protest at 13.

<sup>24</sup> 10 C.F.R. § 590.303(e).

domestic natural gas prices, however APGA fails to explain how its general interest is particular or specific to the SLNG Export Project itself. Rather, APGA is attempting to use the SLNG Export Project docket to oppose broadly any activity that might increase the price of natural gas. This advocacy, while ignoring fundamental supply and demand economics, could be construed as an effort to impose non-competitive restrictions in the U.S. energy markets. Plainly, APGA does not want other market participants, like LNG export projects, to compete for domestic natural gas supplies no matter what net positive economic benefits such projects may bring. The general nature of APGA's non-project specific claims are exemplified by APGA's similar protests of other LNG export applications.<sup>25</sup> Because APGA has not sufficiently set forth the facts upon which its claims of interest are based, the DOE/FE should deny its request to intervene in the above captioned proceeding. Indeed, APGA will be given the opportunity to raise its general concerns related to the formation of DOE's LNG export policy in comments to be submitted to the agency on January 24, 2012.<sup>26</sup> Thus, granting it party status is not only improper due to a lack of project-specific impacts, but also unnecessary in order for APGA's general concerns to be considered by DOE/FE.

Nonetheless, in the event that APGA is allowed to intervene, SLNG provides the following preliminary response to the economic issues raised in the protest in order to facilitate a complete and accurate record in this docket. In subsequent comments to be submitted to DOE/FE on January 24, 2012, SLNG intends to address more fully the economic and market

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<sup>25</sup> See, e.g., *Cameron LNG, LLC*, FE Docket No. 11-162-LNG, Motion for Leave to Intervene and Protest of the American Public Gas Association (Apr. 23, 2012); *Gulf Coast LNG Export, LLC*, FE Docket No. 12-05-LNG, Motion for Leave to Intervene and Protest of the American Public Gas Association (Aug. 3, 2012); *LNG Development Company, LLC*, FE Docket No. 12-77-LNG, Motion for Leave to Intervene and Protest of the American Public Gas Association (Nov. 6, 2012).

<sup>26</sup> As APGA notes in its comments, it intends to take advantage of the opportunity to file detailed comments in response to DOE's EIA and NERA studies. APGA Protest at 3, n. 3.

impact claims raised by APGA as such issues overlap with the issues presented in the EIA Study and NERA Study, which SLNG will address as well at that time.

1. APGA Has Failed to Overcome the Rebuttable Presumption that the Export Authorization Is in the Public Interest

The first claim by the APGA, that the Project could cause an increase in the domestic price of natural gas, does not mean that the Project is inconsistent with the public interest. The public interest determination is not limited to simply the effect on natural gas prices, but is a broader analysis, as described above in Section II of this Answer. APGA points to selective elements of the EIA Study and the NERA Study as evidence of the expected price increases, but APGA neglects to mention that even while the increase in prices will likely be relatively minor, the exportation of LNG is expected to have a net positive effect: “In all of these cases, benefits that come from export expansion more than outweigh the losses from reduced capital and wage income to U.S. consumers, and hence LNG exports have net economic benefits in spite of higher domestic natural gas prices.”<sup>27</sup> APGA also irrelevantly points out that the NERA Study uses outdated information, such as the Annual Energy Outlook (“AEO”) 2011 data and ignores more recent data. However, APGA fails to show that even if the NERA Study used the more recent data the net economic benefits would not be positive.

APGA also selectively culls data from the AEO2013 Early Release Overview (“AEO2013 Report”).<sup>28</sup> APGA states that AEO2013 Report projects an increase in domestic demand, particularly from the bulk chemicals industry, the primary metals industry, and higher output in the manufacturing sector.<sup>29</sup> Similarly, APGA also states that the AEO2013 Report

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<sup>27</sup> NERA Study at 1.

<sup>28</sup> U.S. ENERGY INFORMATION ADMINISTRATION, ANNUAL ENERGY OUTLOOK 2013 EARLY RELEASE REPORT (Dec. 5, 2012), *available at*: <http://www.eia.gov/forecasts/aeo/er/index.cfm>.

<sup>29</sup> APGA Protest at 8.



shows an increased reliance on natural gas for electricity generation. However, APGA fails to acknowledge that the AEO2013 Report also reflects increased demand from LNG exports, which the EIA predicts will start at a level of 0.6 Bcf/day in 2016 and increase to 4.5 Bcf/day in 2027.<sup>30</sup> Thus, increased LNG exports such as those for which SLNG seeks authorization in this docket are already factored into the AEO2013 Report. Moreover, APGA omits the supply side of the supply/demand equation in that the AEO2013 Report also predicts an 8 percent increase in dry gas production as compared to the AEO2012 data.<sup>31</sup> Increased demand when coupled with increased supply does not lead to the consequences claimed by APGA. Thus, APGA has failed to overcome the rebuttable presumption that the export authorization is in the public interest.

2. The Likelihood of Commercial Success of the Export Project Is Not Relevant to the Public Interest Determination

As explained above, the legal standard for approving an LNG export application and the DOE's associated policy guidelines do not involve an analysis or review of whether a project has a likely chance of being commercially successful; that risk is borne primarily by the project proponent. In fact, the DOE's policy promotes free and open trade by minimizing federal control and involvement in energy markets.<sup>32</sup> DOE/FE should reject the APGA's arguments here as beyond the scope of the proceeding because it is not relevant to the public interest determination.

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<sup>30</sup> *Id.* at 11.

<sup>31</sup> AEO2013 Report at 10.

<sup>32</sup> *Policy Guidelines and Delegation Orders Relating to the Regulation of Imported Natural Gas*, 49 Fed. Reg. 6,684 (Feb. 22, 1984).

#### IV. ANSWER TO SIERRA CLUB MOTION TO INTERVENE AND PROTEST

##### A. *Overview of the Sierra Club's Motion to Intervene and Protest*

Sierra Club moves to intervene in the above-captioned proceeding on the basis of having a nation-wide network of members, including “8,966 members in Georgia.”<sup>33</sup> In its Protest, Sierra Club assails SLNG’s Application as not in the public interest and outlines a litany of alleged environmental impacts, such as impacts from the construction of the Project, and “induced” hydraulic fracturing (“fracking”) of unconventional gas resources. Sierra Club claims that the Project will increase domestic natural gas prices, which it claims would then cause an increase in coal-fired generation and result in increased air emissions.<sup>34</sup> Sierra Club also alleges that the economic benefits associated with the project are overstated and based on flawed studies.<sup>35</sup> Finally, Sierra Club claims that the administrative record before the DOE/FE is incomplete and therefore inadequate on which to make an administrative decision.<sup>36</sup>

##### B. *Sierra Club's Motion to Intervene Should be Denied*

SLNG opposes Sierra Club’s motion to intervene. Sierra Club has not specified an interest in the SLNG Export Project sufficient to warrant status as an intervenor. Even if it is granted intervenor status pursuant to 10 C.F.R. § 303(f) (2012), its arguments fail to rebut the presumption that the export authority SLNG seeks in this case is in the public interest.

Most of the issues raised in Sierra Club’s Protest are irrelevant to this proceeding. Indeed, the bulk of the Sierra Club’s protest is dedicated to asserting a list of generalized

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<sup>33</sup> Sierra Club Protest at 4.

<sup>34</sup> *Id.* at 6.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 6. DOE/FE has expressly acknowledged that “no final decisions will be issued in the 15 pending proceedings until DOE has received and evaluated the comments requested [on the NERA Study, which assesses the macroeconomic impact of LNG exports on the U.S. economy]. 77 Fed. Reg. 73,627, 73,629 (Dec. 11, 2012).”

environmental and other concerns related to the exploration and production of shale gas.<sup>37</sup> As explained further below, these arguments are better suited to local permitting proceedings. Moreover, highlighting the nature of Sierra Club’s generalized, non-specific comments, Sierra Club itself states that, “the full scope of the proposed project’s local impacts is not yet known” and, “We offer preliminary comments on these impacts now, identifying impacts that are likely to occur based on experience with *similar projects*.”<sup>38</sup> Sierra Club admittedly is basing its concerns on *other* projects. As explained below, because the review of any environmental impacts will occur before FERC, Sierra Club cannot know, and therefore cannot articulate, a specific environmental impact stemming from the Project that will directly affect any of its members.<sup>39</sup>

Granting Sierra Club’s motion to intervene here is both improper and unnecessary. First, Sierra Club will be given an opportunity to raise generic concerns related to economic and market impacts claimed to result from LNG exports in comments to be filed with DOE on January 24, 2012. Second, as discussed in detail below, Sierra Club will be given the opportunity to raise its environmental concerns related to the SLNG Export Project when SLNG submits its application to FERC.<sup>40</sup>

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<sup>37</sup> *Id.* at 19-52.

<sup>38</sup> *Id.* at 20 (emphasis added).

<sup>39</sup> Sierra Club submits that it has 8,966 members living in Georgia, but it does not identify where in Georgia such members live or whether those members will be impacted from the Project. *Id.* at 4. Further, Sierra Club does identify any member that may specifically object to the Project.

<sup>40</sup> As it has with other LNG export applications proceedings, Sierra Club will undoubtedly file a reply to this Answer. Sierra Club Protest at 5, n. 2. SLNG opposes Sierra Club’s attempt to assert a procedural right that the DOE’s regulations do not provide. The DOE regulations do not automatically provide parties the right to a reply, indeed they contemplate (1) a protest to an application, and (2) an answer by the license applicant. 10 C.F.R. §§ 590.303(b), 590.304(f). Moreover, Sierra Club’s attempt to reserve a reply opportunity applies to only its motion to intervene, and not to its protest. Therefore, any subsequent reply comments that attempt to re-assert its previously-filed Protest or submit new arguments should be rejected as an improper additional protest. Moreover, Sierra Club’s reliance on 10 C.F.R. §

Nonetheless, in the event that Sierra Club is allowed to intervene, SLNG provides the following preliminary response to the environmental and economic issues raised in the Sierra Club Protest in order to facilitate a complete and accurate record in this docket. As noted above, in subsequent comments to be submitted to DOE on January 24, 2012, SLNG intends to address more fully the economic and market impact claims raised the Protestors, including Sierra Club, as such issues overlap with issues raised in the EIA Study and NERA Study.

*C. DOE is Not Required To Conduct a NEPA Analysis At This Time*

Under the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* (“NEPA”), Federal agencies must produce a “detailed statement” (known as an environmental impact statement (“EIS”)) of any “major Federal actions significantly affecting the quality of the human environment.”<sup>41</sup> An EIS must be prepared when an agency “has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated.”<sup>42</sup> The application that SLNG filed seeking conditional approval does not require DOE/FE to prepare an Environmental Impact Statement or an Environmental Assessment.

The SLNG Application expressly “requests that the export authorization recognize that the required environmental review will be conducted by [FERC] in conjunction with its review of the request for authorization of the construction and operation of the Export Project

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590.310 (“Opportunity for additional procedures”) is unjustified as that section allows parties to file motions requesting additional procedures, like the opportunity to file written comments, conduct discovery, participate at an oral argument, *etc.*, but it does not provide a carte blanche to file reply comments *ad infinitum*. To the extent that DOE grants Sierra Club’s motion to submit an additional protest, SLNG must be allowed to answer. 10 C.F.R. § 590.304(f).

<sup>41</sup> 42 U.S.C. § 4332(2)(C).

<sup>42</sup> 40 C.F.R. § 1508.23; *see also Kleppe v. Sierra Club*, 427 U.S. 390, 404-406 (1976) (an EIS is only required when an agency has made a final decision on a project, not when the action has merely been contemplated by the agency).

facilities.”<sup>43</sup> Furthermore, the application states “[i]f necessary, DOE’s authorization may be conditioned upon satisfactory completion of the Commission’s environmental review.”<sup>44</sup> Although the environmental impacts have not yet been assessed by the FERC, the application provides a short summary of the anticipated environmental impacts, explaining that “[t]he Export Project will have minimal environmental impacts given that, following construction, the export facilities will be located within the previously authorized footprint of the existing Elba Island Terminal.”<sup>45</sup>

It is premature for Sierra Club to allege that “DOE/FE cannot proceed with Southern LNG’s request for *conditional* export authorization until the NEPA process is completed, including preparation of an Environmental Impact Statement”<sup>46</sup> because a NEPA analysis is not required in order to grant the conditional relief that SLNG is requesting. DOE/FE routinely issues authorizations that are conditioned upon DOE concurrently conducting its NEPA analysis with FERC’s review.<sup>47</sup> Moreover, such conditional approvals have been upheld by the courts.<sup>48</sup>

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<sup>43</sup> SNLG Application at 10; *see also id. at 36-37* (“[a]ny additional environmental impacts associated with construction and operation of the Export Project will be reviewed by the Commission and the applicable state and federal permitting agencies (e.g., United States Army Corps of Engineers, Georgia Department of Natural Resources, and Coast Guard, among others) as part of the permitting process for the Export Project).”

<sup>44</sup> *Id.* at 10.

<sup>45</sup> *Id.* at 36-37.

<sup>46</sup> *Id.* at 6 (emphasis added).

<sup>47</sup> *See* 46 Fed. Reg. 44,696, 44,700 (Sept. 4, 1981) (“A conditional decision would be appropriate in cases where a need exists for an indication of the Administrator’s preliminary findings and conclusions, but additional information is needed before a final decision and order can be rendered.”). Granting conditional approval to export LNG is similar to situations where DOE has granted conditional approval to import LNG to terminal facilities. *See* Ocean State Power, DOE/ERA Opinion and Order No. 243-A, 1 ERA ¶ 70,810 (1988) (approval for importing natural gas from Canada conditioned upon a final opinion and order from Economic Regulatory Administration after DOE review of the final EIS being prepared by FERC).

<sup>48</sup> *See, e.g., PUC of Calif. v. FERC*, 900 F.2d 269, 282-83 (D.C. Cir. 1990) (agency must assess environmental data before effective date of final decision); *City of Grapevine, Tex. V. Dep’t of Transp.* 17

Issuing a conditional approval here would be consistent with the NEPA regulations, which encourage efficiency, coordination, and cooperation between the different federal agencies.<sup>49</sup> “Agencies are not required to duplicate the work done by another federal agency which also has jurisdiction over a project. NEPA regulations encourage agencies to coordinate on such efforts.”<sup>50</sup>

It is also consistent with the NGA if DOE/FE conditions its approval on FERC completing its environmental analysis. In Chapter 15B of the NGA, Congress granted FERC the exclusive authority to approve or deny an application for a project that seeks to site, construct, and operate an LNG terminal.<sup>51</sup> The NGA provides that FERC “shall act as the lead agency for the purposes of coordinating all applicable Federal authorizations and for the purposes of complying with [NEPA].”<sup>52</sup> In contrast, DOE/FE participates in the approval process as cooperating agency.<sup>53</sup> Consistent with this division of responsibilities between FERC and DOE, the SLNG Application to DOE seeks conditional authorization, which will be subject to FERC completing the required environmental review.<sup>54</sup> Accordingly, Sierra Club’s general environmental concerns are more appropriately addressed during FERC’s review.

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F.3d 1502, 1509 (D.C. Cir. 1994) (upholding the Federal Aviation Administration’s approval of a runway, conditioned upon compliance with the National Historic Preservation Act).

<sup>49</sup> 40 C.F.R. § 1501.6.

<sup>50</sup> *Sierra Club v. U.S. Army Corps of Eng’rs*, 295 F.3d 1209 (11th Cir. 2002).

<sup>51</sup> 15 U.S.C. § 717b(e).

<sup>52</sup> 15 U.S.C. § 717(n)(b)(1); *see also* Sierra Club Protest at 10 (citing 15 U.S.C. § 717n) (“the NGA designated the former Federal Power Commission as the ‘lead agency’ for NEPA purposes.”)

<sup>53</sup> *See, e.g., Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG, Order No. 2961-A, at 6 (Aug. 7, 2012) (“DOE/FE Order 2961-A”) (“FERC was the lead agency in the environmental analysis of the Project and DOE was a ‘cooperating agency.’”). A “cooperating agency” “means any Federal agency other than a lead agency which has 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 human environment.” 40 C.F.R. § 1508.5.

<sup>54</sup> SLNG Application at 10.

DOE's own regulations specify that the Assistant Secretary has the authority to "issue a conditional order at any time during a proceeding prior to issuance of a final opinion and order."<sup>55</sup> DOE/FE has exercised this authority by issuing conditional approvals to other LNG projects, while expressly acknowledging that it is a cooperating agency for purposes of the NEPA analysis and that FERC was leading the environmental impact analysis.<sup>56</sup> As noted above, as a cooperating agency, DOE is not required to "unnecessarily duplicate the FERC's environmental review activities, but following the completion of the FERC process, [will] independently review the FERC's analysis, findings, and conclusions and [will] determine whether or not further environmental review [is] necessary prior to issuance of final agency action on the application. . . ."<sup>57</sup> Consistent with this practice, DOE has acknowledged that "[n]o *final* decision will be issued in [the SLNG Application] proceeding until DOE has met its environmental responsibilities."<sup>58</sup> Thus, DOE/FE as the cooperating agency, will be able to meet its environmental responsibilities once FERC completes its environmental review process.<sup>59</sup>

*D. Any Future NEPA Analysis Will Be Conducted as Required By Law*

As noted above, FERC will be acting as the lead agency for the environmental analysis of the SLNG Project. Because DOE is authorized under its regulations to issue a conditional approval,<sup>60</sup> Sierra Club's present concerns about whether the future NEPA analysis will be comprehensive are premature. SLNG disagrees with Sierra Club's characterization of the environmental effects of its project and reserves the right to rebut Sierra Club's assertions at the

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<sup>55</sup> 10 C.F.R. § 590.402.

<sup>56</sup> *See, e.g.*, DOE/FE Order 2961-A at 25.

<sup>57</sup> *Id.* at 6-7.

<sup>58</sup> 77 Fed. Reg. 63,808 (emphasis added).

<sup>59</sup> *See, e.g.*, DOE/FE Order 2961-A at 27-28.

<sup>60</sup> 10 C.F.R. § 590.402.

appropriate time and in the appropriate forum, *e.g.*, FERC. SLNG’s current response addresses only the most salient misstatements of law and fact in the Sierra Club Protest.

1. A Programmatic EIS is Not Required

Sierra Club alleges that DOE/FE is required to consider the cumulative effects of all pending LNG export proposals and that DOE/FE “can best conduct this analysis by preparing a programmatic EIS considering the impacts of all gas export proposals at once.”<sup>61</sup> However, as Sierra Club acknowledges,<sup>62</sup> DOE/FE is not obligated to prepare a programmatic EIS that assesses the cumulative effects of all pending LNG export proposals.

NEPA requires an assessment of all reasonably foreseeable impacts before the agency makes an irretrievable resource commitment. 42 U.S.C. § 4332(2)(C)(v). “Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.”<sup>63</sup> For example, where an agency is proposing to take “broad Federal actions such as the adoption of new agency programs or regulations,”<sup>64</sup> the agency “may find it useful to evaluate the proposal(s)” geographically (to include actions in the same general location), generically (to include actions with relevant similarities), or by stage of development.<sup>65</sup>

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<sup>61</sup> Sierra Club Protest at 15.

<sup>62</sup> *Id.* (“DOE/FE has the discretion to prepare a programmatic EIS, even if it determines that it does not have the duty to do so.”).

<sup>63</sup> 40 C.F.R. § 1502.4(a).

<sup>64</sup> 40 C.F.R. § 1502.4(b).

<sup>65</sup> 40 C.F.R. § 1502.4(c).



However, the agency is not required to prepare a programmatic EIS where no programmatic or regional action has been proposed.<sup>66</sup> Preparing a programmatic EIS focused on discrete and independently proposed LNG export applications for projects that may or may not be constructed across the entire country would produce little more than a speculative study of potential environmental impacts.<sup>67</sup> DOE is not required to prepare such an analysis that predicts such speculative potential impacts;<sup>68</sup> rather, where the agency lacks certain information that cannot be obtained, the agency is merely required to acknowledge in the EIS that the information is unavailable.<sup>69</sup>

## 2. An Analysis of Future Gas Production Wells is Not Required

Much of the Sierra Club's protest is directed at its concerns related to the methods and technologies used in the production of natural gas from unconventional sources. Not only is much of the Sierra Club Protest factually inaccurate,<sup>70</sup> but it is also largely irrelevant because a

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<sup>66</sup> See *Kleppe v. Sierra Club*, 427 U.S. 390, 414-15 (1976) (rejecting plaintiffs' request that the Court order a programmatic EIS on the development of coal mines where there was no regional plan proposed).

<sup>67</sup> See *Gulf Restoration Network v. U.S. Dep't of Transp.*, 452 F.3d 362, 369-71 (5th Cir. June 8, 2006) (upholding the Secretary's decision to not include several other projects in the cumulative impacts analysis for an LNG project because the likelihood of the permitting and completion of those projects was too speculative).

<sup>68</sup> See *id.*; *Kleppe*, 427 U.S. at 414-15.

<sup>69</sup> 40 C.F.R. § 1502.22.

<sup>70</sup> For example, Sierra Club alleges that there is strong evidence that emissions from natural gas production are higher than have been commonly understood and that EPA has identified natural gas systems as the "single largest contributor to United States anthropogenic methane emissions." Sierra Club Protest at 33-34. Sierra Club has relied on outdated and flawed studies in characterizing air emissions associated with natural gas production, transmission and distribution. In July 2012, researchers out of the Massachusetts Institute of Technology ("MIT") published a study that found recent studies of shale gas-related fugitive emissions have made "unreasonable assumptions" by failing to account for "the impact of real world gas handling field practice" and that producing states have instituted new regulations applicable to flaring. F. O'Sullivan and S. Paltsev, Environ, Shale gas production: potential versus actual greenhouse gas emissions. Res. Lett. 7 at 4 (2012) (concluding that "[a]lthough fugitive emissions from the overall natural gas sector are a proper concern, it is incorrect to suggest that shale gas-related hydraulic fracturing has substantially altered the overall GHG intensity of natural gas production.")

large portion of the Protest is focused on what Sierra Club perceives to be the environmental risks of shale development generally – not environmental concerns specifically related to the siting, construction, and operation of SLNG’s proposed export facility in Georgia. The speculative environmental impacts that Sierra Club raises are generic in character and are not likely, relevant, or reasonably foreseeable effects of the specific decision currently resting with the agency. For example, Sierra Club objects that SLNG’s Application does not discuss “induced” gas production.<sup>71</sup> Granted, SLNG’s Application does state that “exports of domestic LNG will provide an additional market for U.S. production, thereby encouraging exploration, development and production at times when domestic demand alone might not.”<sup>72</sup> However, the location and type of any such increased production is completely unknown.<sup>73</sup> DOE is not required to speculate on any impacts related to an indeterminate increase in natural gas production at an unknown location and an unknown type of production – to require such speculation would be to require DOE to “foresee [ ] the unforeseeable.”<sup>74</sup> Overall, Sierra Club raises concerns about speculative environmental impacts that may (or may not) be caused by natural gas development.<sup>75</sup> Moreover, Sierra Club’s Protest fails to articulate a proximate causal

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<sup>71</sup> Sierra Club Protest at 25-31.

<sup>72</sup> SLNG Application at 27.

<sup>73</sup> *See generally id.*

<sup>74</sup> *See City of Davis v. Coleman*, 521 F.2d 661, 676 (9th Cir. 1975).

<sup>75</sup> For example, Sierra Club claims that EPA has concluded that hydraulic fracturing has contaminated the groundwater in Pavillion, WY and Dimock, PA. Sierra Club Protest at 48-49. However, Sierra Club fails to note that EPA Administrator Lisa Jackson testified before the U.S. House Oversight Committee in May 2011, saying that, although some EPA investigations into groundwater were ongoing, she was “not aware of any proven case where the fracking process itself has affected water.” Pain at the Pump: Policies that Suppress Domestic Production of Oil and Gas: Hearing before the Committee on Oversight and Government Reform U.S. House of Representatives, 112th Cong. (May 24, 2011) (testimony of Lisa P. Jackson, Administrator, U.S. Environmental Protection Agency). In fact, on December 26, 2012, EPA stated that 18 research projects are underway to study the hydraulic fracturing water cycle, but that “[a]t this time, the EPA has not made any judgment about the extent of exposure to these chemicals when used in hydraulic fracturing fluids or found in hydraulic fracturing wastewater, or

connection between those speculative environmental impacts associated with natural gas development and the specific approval that SLNG seeks here from DOE/FE to export natural gas from the Elba Island Terminal.<sup>76</sup> Therefore, any potential environmental issue associated with natural gas development is not relevant to SLNG's Application here.

Moreover, as the lead agency, FERC will conduct a NEPA review that is consistent with the scope required under law. The scope of that review also does not need to evaluate the environmental impacts from shale development.<sup>77</sup> The development of natural gas will likely happen regardless of whether DOE approves SLNG's Project.<sup>78</sup> But, as FERC has concluded, any such additional development is not sufficiently causally-related to mandate that it be considered in a NEPA analysis for natural gas infrastructure development.<sup>79</sup> "In order to be sufficiently causally connected, the environmental impact must be 1) caused by the proposed action, and 2) reasonably foreseeable."<sup>80</sup> "To require the Commission to guess whether or when permitted wells may be drilled, when additional wells may be permitted. . . would at best amount

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their potential impacts on drinking water resources." U.S. EPA, Study of the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources, Progress Report, at 1, 3 (Dec. 2012).

<sup>76</sup> FERC has previously considered and rejected the argument that increased natural gas production must be included in a NEPA analysis. *See, e.g., Texas Eastern Transmission, LP*, 139 FERC ¶ 61,138 at pp. 70-73 (2012); *Sabine Pass Liquefaction, LLC*, 139 FERC ¶ 61,039 at pp 94-99 (2012); *Central N.Y. Oil & Gas Co.*, 137 FERC ¶ 61,121 at PP 81-107 (2011) ("CNYOG Order"), *reh'g denied*, 138 FERC ¶ 61,104 at PP 33-56 (2012) ("CNYOG Rehearing Order"), *affirmed, Coalition for Responsible Growth & Res. Conservation v. FERC*, No. 12-566-ag, 2012 WL 2097249 (2d Cir. June 12, 2012). *Cf. Defenders of Wildlife v. BOEMRE*, No. 1:10-cv-00254 (S.D. Ala. May 8, 2012) (granting summary judgment to BOEMRE because the act of issuing a lease for Lease Sale 213 will not affect the human environment in a significant manner or to a significant extent not already considered and a lease sale itself does not directly cause oil spills).

<sup>77</sup> *See* CNYOG Order at PP 92-95 (concluding that Marcellus Shale development and its associated environmental effects were not sufficiently causally-related to a pipeline project to mandate their consideration in the NEPA analysis), *affirmed, Coalition for Responsible Growth & Res. Conservation*, No. 12-566-ag, 2012 WL 2097249 (2d Cir. June 12, 2012).

<sup>78</sup> *See* CNYOG Order at P 91.

<sup>79</sup> *See, e.g., id.* at PP 92-95.

<sup>80</sup> *See., e.g., id.* at P 83.

to speculation as to future events and would be of little use as input in deciding whether to approve the [Project].”<sup>81</sup>

Moreover, currently DOE and FERC have no jurisdiction or regulatory authority over natural gas production – rather, that authority belongs to the states where any future wells will be sited.<sup>82</sup> As the U.S. Supreme Court has held, an agency is not the “legally relevant ‘cause’ of the effect” and need not consider effects in a NEPA analysis “where an agency has no ability to prevent a certain effect due to its limited statutory authority over the relevant actions. . . .”<sup>83</sup> If, as Sierra Club urges, the SLNG NEPA analysis includes the extra-jurisdictional review of natural gas production, that analysis would not serve NEPA’s purposes.<sup>84</sup> It would not serve the goal of aiding FERC’s or DOE’s decision-making because FERC and DOE “simply lack [] the power to act on whatever information” is developed concerning impacts that the agencies’ decisions cannot prevent.<sup>85</sup> Likewise, analyzing these impacts would not serve NEPA’s related goal—informing the public—because gathering public input about environmental impacts outside the agency’s jurisdiction is futile and irrelevant to the more limited statutory grounds on which DOE’s decision must be based.<sup>86</sup> Because FERC and DOE lack the authority to regulate the effects of shale development, they need not consider the environmental impacts caused by natural gas production when reviewing SLNG’s application.

Similarly the “alternatives” that Sierra Club claims “DOE/FE should consider, at a

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<sup>81</sup> *Id.* at P 100.

<sup>82</sup> *Id.* at P 93; CNYOG Rehearing Order at P 8.

<sup>83</sup> *Dept. of Transp. v. Pub. Citizen*, 541 U.S. 752, 770 (2004).

<sup>84</sup> *Id.* at 768.

<sup>85</sup> *See id.*

<sup>86</sup> *See id.* at 768-69.

minimum”<sup>87</sup> are not “alternatives” in the context of NEPA – they are at best policy statements or perhaps additional conditions that Sierra Club would like imposed on LNG projects to achieve its goal of hindering additional natural gas production in the U.S. In contrast, NEPA requires an analysis of alternatives that are consistent with the project’s purpose and need.<sup>88</sup> The purpose of the Project is not to increase natural gas production, but rather to export supplies of natural gas to the extent that future production and foreign demand make it commercially reasonable to do so. A NEPA alternatives discussion need not include “every alternative device and thought conceivable to the mind of man.”<sup>89</sup> Rather, “[t]he goals of an action delimit the universe of the action’s reasonable alternatives.”<sup>90</sup> That is so because “Congress did not expect agencies to determine for the applicant what the goals of the applicant’s proposal should be.”<sup>91</sup> Thus, when the agency does assess actual alternatives to the Project, it “may accord substantial weight to the preferences of the applicant and/or sponsor in the siting and design of the project.”<sup>92</sup> Furthermore, DOE/FE may impose mitigation as it deems appropriate.<sup>93</sup>

*E. SLNG’s Proposed Export Project is in the Public Interest*

As demonstrated previously in the SLNG Application, the Project will provide a range of benefits that the Sierra Club fails to rebut with its generalized comments. The ample Project benefits are again summarized below, followed by a rebuttal of Sierra Club’s comments.

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<sup>87</sup> Sierra Club Protest at 17 (e.g., “[w]hether to require exporters to certify that any unconventional gas produced as a result of their proposal (or shipped through their facilities) has been produced in accordance with all environmental laws. . . .”).

<sup>88</sup> See *Citizens’ Comm. to Save Our Canyons v. U.S. Forest Serv.*, 297 F.3d 1012, 1031 (10th Cir. 2002).

<sup>89</sup> *Vt. Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 551 (1978).

<sup>90</sup> *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195 (D.C. Cir. 1991).

<sup>91</sup> *Id.* at 199.

<sup>92</sup> *City of Grapevine v. Dept. of Transp.*, 17 F.3d 1502, 1506 (D.C. Cir. 1994).

<sup>93</sup> 40 C.F.R. §§ 1508.20, 1505.2(c), 1505.3.

1. The Project Will Provide Substantial Benefits Supporting the Public Interest

SLNG has identified numerous benefits that show the Project will not harm the public interest. First, as shown in the Navigant Market Analysis Study included with SLNG's Application, any increase on domestic natural gas prices will be quite small.<sup>94</sup> Upward pressure on prices due to increased demand for exports would likely be offset by a reduction in domestic price volatility. Recent years have seen a dramatic increase in natural gas production, and if history is a guide, the recent cut-back in the development of new wells will lead to a sharp rebound in natural gas prices. This cycle of price fluctuations will be reduced by the entry of LNG export facilities, such as the SLNG Export Project. The ability to allow the market to allocate gas usage through expanded exports of natural gas as LNG when domestic natural gas prices drop and reduced natural gas exports when domestic gas prices rise will work to stabilize the domestic natural gas prices. Such stability will smooth investment in natural gas production.<sup>95</sup>

Customers of the Project will have the flexibility to reduce their exports and redirect gas to the domestic market if demand and market prices indicate a sufficient need for incremental supplies. Just as the LNG exported from the Project is not tied to any particular source of gas, the increased production and reserves are not irrevocably or unilaterally dedicated to foreign destinations. This arrangement is consistent with the Policy Guidelines, which state that

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<sup>94</sup> SLNG Application, Appendix A.

<sup>95</sup> Navigant Market Analysis Study at 9, 22, 35.

competitive export arrangements are essential to the public interest.<sup>96</sup> Succinctly, as has been the situation with LNG imports,<sup>97</sup> the actual export of LNG will be decided by competitive factors.

The Project will bring important benefits to the national, regional, and local economies. As demonstrated in the Navigant Economic Impact Assessment submitted with the SLNG Application, expenditures related to the development, support, and construction of the Project are estimated to cost between \$1.4 and 2 billion.<sup>98</sup> SLNG estimates that \$187.5 million will be spent within Chatham, Bryan, and Effingham Counties in Georgia (the “Savannah Metropolitan Statistical Area”).<sup>99</sup> The operation and maintenance of the Project will result in \$118.6 million in spending annually. Customers of the Project will spend an estimated \$820.9 million annually on purchasing natural gas for the Project.<sup>100</sup>

The Project will bring numerous jobs to Georgia and throughout the country. The Navigant Economic Impact Assessment expects that over the two and a half year construction timeframe, the Project will create 807 full-time equivalent jobs in Chatham County, earning \$30 million each year on average.<sup>101</sup> Similarly, for the Savannah Metropolitan Statistical Area the Project will create an additional 1,064 full-time equivalent jobs, earning \$39.4 million each year.<sup>102</sup> Moreover, the continuing economic impact from the operation of the Project will be

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<sup>96</sup> Policy Guidelines at 7.

<sup>97</sup> The market forces that curbed LNG imports will act similarly on LNG exports. These forces, driven by domestic natural gas supply and demand while working in conjunction with international natural gas supply and demand, determine whether customers of an LNG import/export project will utilize the import/export terminal.

<sup>98</sup> SLNG Application, Appendix B, Navigant Economics, Southern LNG Export Project Economic Impact Assessment Study, at 1 (Aug. 31, 2012) (“Navigant Economic Impact Assessment”).

<sup>99</sup> *Id.* at 3.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* at 29.

<sup>102</sup> *Id.*

substantial. The Project is expected to create 421 new full-time equivalent jobs in Chatham County and 563 more full-time equivalent jobs in the Savannah Metropolitan Statistical Area.<sup>103</sup> The expected employee earnings and value added are \$20.7 million higher and \$73.2 million higher, respectively, in Chatham County than without the facilities.<sup>104</sup> For the Savannah Metropolitan Statistical Area, the employee earnings and value added will increase by \$28.3 million and \$77 million, respectively.<sup>105</sup> With the purchases of natural gas throughout the country, such purchases are expected to create 7,648 new jobs, \$501.5 million more employee earnings, and \$1,134 million more value added than would have been absent the natural gas purchases.<sup>106</sup>

Beyond the significant employment impacts, the Project will also generate substantial tax revenues for the local and federal governments. For example, estimated the estimated federal tax revenues are expected to increase by \$420 million during construction and the state and local tax revenues will increase by \$226.9 million.<sup>107</sup> The Project will also have positive effects on the U.S. trade deficit and the export of LNG may be in the U.S.'s geopolitical interests. As described in the SLNG Application, the Project may help reduced the U.S. trade deficit, a benefit expressly recognized by the DOE in its prior decisions.<sup>108</sup>

## 2. Sierra Club Has Failed to Rebut the Presumption

Against the background of the significant benefits described above, Sierra Club's objections and litany of alleged environmental and economic impacts do not credibly show that

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<sup>103</sup> *Id.* at 37.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* at 41, 43.

<sup>108</sup> SLNG Application at 32-33.



exports from the Project are inconsistent with the public interest. Conversely, SLNG has proffered ample evidence demonstrating the economic benefits of the Project. These benefits, as confirmed by the recently-issued NERA Study, demonstrate that the Project is in the public interest.

### 3. The Navigant Market Analysis Study is Sound

Sierra Club raises several issues, which should be rejected, with the Navigant Market Analysis Study. First, Sierra Club attacks the Navigant Market Analysis Study's reliance on the AEO2011 data;<sup>109</sup> however, Sierra Club fails to note that both the AEO2012 Overview and the AEO2013 Report show increasing natural gas production. The AEO2012 Overview continues to acknowledge increasing production, driven by shale development, and falling prices, along with the possibility of LNG exports; these same findings are echoed in the AEO2013 Report, which was issued December 5, 2012.<sup>110</sup> So, while the total estimated recoverable natural gas *reserves* may fluctuate, the data demonstrates that production—the more important indicator—is increasing and prices are remaining low. Sierra Club also fails to realize the relative size of the U.S. natural gas reserves in relation to demand. The relatively large natural gas reserves and responsive production provides a larger elasticity of supply that enables supply to respond to demand without significant changes to the price of natural gas. Moreover, Acting EIA Administrator Howard Gruenspecht has testified that EIA's reduction in the resource base is not material to its 25-year projections. He stated that “Whether the U.S. has 100 years of total recoverable resources at current rates or 90 years of total recoverable resources estimated at

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<sup>109</sup> Sierra Club Protest at 55.

<sup>110</sup> U.S. ENERGY INFORMATION ADMINISTRATION, ANNUAL ENERGY OUTLOOK 2013 EARLY RELEASE REPORT (Dec. 5, 2012), *available at*, <http://www.eia.gov/forecasts/aeo/er/index.cfm>.

current rates, I just don't think it has much of an effect.”<sup>111</sup> Clearly, the overall magnitude of the estimated reserves 90 to 100 years from now has little bearing on the 20-year export authorization sought by SLNG.

Second, Sierra Club argues that the inclusion of LNG exports from Sabine Pass, Louisiana and Kitimat, British Columbia should not be included in the baseline scenario described in the Navigant Market Analysis Study.<sup>112</sup> These projects are properly included in the baseline scenario. The Kitimat terminal is the only LNG export facility approved by the Canadian National Energy Board at the time of modeling. Similarly, the only U.S. LNG export project to receive DOE/FE authorization to export LNG to non-FTA countries is the Sabine Pass terminal, and is currently under construction.<sup>113</sup> Accordingly, it is reasonably likely that these two export projects will be constructed and therefore should be included in the baseline scenario. Sierra Club's criticisms to the contrary should be dismissed.

Third, the Navigant Market Analysis Study does not overstate domestic supply, as Sierra Club alleges.<sup>114</sup> Sierra Club faults the study for not incorporating revised estimates of total natural gas reserves, but Sierra Club confuses the inputs to Navigant's model. The modeling is not based on estimated natural gas reserves, but is in fact based on production estimates, which provide a conservative analysis.<sup>115</sup> The revised natural gas reserves estimates may impact the

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<sup>111</sup> Conway, Irwin, *EIA Downplays Marcellus Reserve Revision*, Interfax Energy (Feb. 1, 2012), available at <http://interfaxenergy.com/natural-gas-news-analysis/north-america/marcellus-reserve-revision-not-the-issue-for-us-gas/>.

<sup>112</sup> Sierra Club Protest at 53.

<sup>113</sup> DOE/FE Order Nos. 2961 and 2961-A.

<sup>114</sup> Sierra Club Protest at 55.

<sup>115</sup> Navigant Market Impact Analysis Study at 34-35. The modeling is conservative because the production estimates do not include production from as yet undevelopment resources, such as the Utica Shale. *Id.* at 34.

modeling only in much longer time frames, 50 to 100 years, well beyond the 20-year export authorization sought by SLNG.

Fourth, Sierra Club hones in on one aspect of the AEO2012 Overview to support its claim that SLNG has overestimated domestic supply, but that report and the AEO2013 Report are actually very supportive of LNG exports.<sup>116</sup> The important conclusion from the AEO2013 Report is that “cumulative production of dry natural gas from 2011 through 2035 in the AEO2013 Reference case is about 8 percent higher than in AEO2012, primarily reflecting continued increases in shale gas production that result from the dual application of horizontal drilling and hydraulic fracturing.”<sup>117</sup> The AEO2013 Report also shows the U.S. becoming a net exporter of LNG in 2016, though the EIA has revised the amount of LNG exports: “U.S. cumulative net LNG exports from 2011 through 2035 are up by 69 percent in AEO2013 compared with AEO2012, due in part to increased use of LNG in markets outside North America, strong domestic production, and low U.S. natural gas prices relative to other markets.”<sup>118</sup> As the AEO2013 Report indicates, the time is ripe for LNG exports.

#### 4. The Navigant Economic Impact Assessment is Sound

Sierra Club attacks the Navigant Economic Impact Assessment because it “rests on a flawed ‘input-output’ method of assessing economic consequences.”<sup>119</sup> However, the input-output model is a widely used method of quantitative economics that considers macroeconomic activity as a system of interrelated goods and services.<sup>120</sup> The purpose of the Navigant

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<sup>116</sup> Sierra Club Protest at 55.

<sup>117</sup> AEO2013 Report at 10.

<sup>118</sup> *Id.* at 11.

<sup>119</sup> Sierra Club Protest at 64-65.

<sup>120</sup> U.S. DEPARTMENT OF COMMERCE, REGIONAL MULTIPLIERS – A USER HANDBOOK FOR THE REGIONAL INPUT-OUTPUT MODELING SYSTEM (RIMS II), Pg. 1 (Mar., 1997).

Economic Impact Assessment was to assess and quantify the economic impact, at the local, regional, and national levels caused by constructing the Project. This approach makes use of regional input-output multipliers prepared by the Bureau of Economic Analysis through a system known as “RIMS II.” Use of the regional multipliers for the counties in the vicinity of the Project helped assure that the analysis reflects the economic characteristics of the Project area.

First, the Sierra Club claims that all input-output models fail to consider counterfactual scenarios, *i.e.*, foregone opportunities, such as how the economy would be impacted if investors made different choices.<sup>121</sup> This criticism should be rejected. The Navigant Economic Impact Assessment provides a project-specific analysis of the expected economic impacts; Sierra Club has offered no compelling studies or analyses that suggest the impacts of the Project would be inconsistent with the public interests. Furthermore, economic analyses need not consider every single hypothetical possibility.

Second, Sierra Club also criticizes the Navigant Economic Impact Assessment for using the term “jobs supported” instead of “jobs created.”<sup>122</sup> Sierra Club further claims that once counterfactuals are considered, the exportation of LNG will cause a loss of manufacturing jobs. Sierra Club cites the NERA Study as evidence, and claims that the NERA Study concludes that exports will not raise U.S. employment.<sup>123</sup> However, Sierra Club is again selectively including only part of the picture. The NERA Study concluded that “LNG exports are not likely to affect the overall level of employment in the U.S.”<sup>124</sup> So, while the employment may not increase

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<sup>121</sup> Sierra Club Protest 65.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 66.

<sup>124</sup> NERA Study at 2.

overall in the U.S., employment is not likely to decrease either.<sup>125</sup> The significance of this is lessened by the NERA Study's broader conclusion that "Across all these scenarios, the U.S. was projected to gain net economic benefits from allowing LNG exports."<sup>126</sup> Sierra Club's conclusions do not amount to analysis or data that supports the proposition that either the Project will decrease jobs, or that approval of the export authorization would be inconsistent with the public interest. Sierra Club must submit analysis or data, rather than conclusory assertions or non-material distinctions, to overcome the presumption that a proposed LNG export project is in the public interest.<sup>127</sup>

Third, Sierra Club argues that increased gas production will harm tourism.<sup>128</sup> Sierra Club is pointing to the potential impacts associated with gas production from unconventional sources, primarily the Marcellus Shale. As a preliminary matter, this claim is a broader complaint not specific to the Project. Natural gas to be exported from the Project will be sourced nationally from the large network of integrated gas transmission pipelines,<sup>129</sup> meaning the particular effect on tourism, such as at the New York Southern Tier, are too remote and speculative to merit consideration here. This concern is yet another attempt to avoid the inescapable conclusion of the NERA Study that LNG exports will provide a net economic benefit to the country.

Fourth, Sierra Club states that SLNG fails to account for the disruption to communities that allegedly may be caused by the "induced gas production."<sup>130</sup> Sierra Club emphasizes that a

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<sup>125</sup> The NERA Study also concluded that the negative effects are likely to be confined to very narrow segments of industry. NERA Study at 67-70.

<sup>126</sup> *Id.* at 1.

<sup>127</sup> *See, e.g.*, DOE/FE Order No. 2961 at 38.

<sup>128</sup> Sierra Club Protest at 66.

<sup>129</sup> SLNG Application at 11.

<sup>130</sup> Sierra Club Protest at 68.

boom-bust cycle will lead to regions being worse off than without the gas production. Again, these claims are insufficient to rebut the presumption that the Project is in the public interest, and these considerations do not relate specifically to the Project, but are instead general and theoretical in nature. As noted above, the effects of shale gas production are too speculative to be included in the review of the SLNG Application. To rebut a public interest presumption, Sierra Club must provide analysis or data to rebut the previously identified project-specific benefits, a showing that is much greater than a narrow focus on a remote geographic region.

In summary, Sierra Club's list of grievances does not relate to the project and the challenges to SLNG's studies or the NERA Study do not suffice to rebut the presumption that the Project is in the public interest. Many of Sierra Club's concerns are related to the production of natural gas from unconventional resources, which are better raised at the local level where permits for such production are issued. Furthermore, Sierra Club's claims regarding job creation and economic benefits are contrary to government policies. President Obama stated at the 2012 State of the Union Address that "We have a supply of natural gas that can last America nearly 100 years. And my administration will take every possible action to safely develop this energy. Experts believe this will support more than 600,000 jobs by the end of the decade.... The development of natural gas will create jobs and power trucks and factories that are cleaner and cheaper, proving that we don't have to choose between our environment and our economy."<sup>131</sup> IHS Global has also estimated that shale gas production alone supported more than 650,000 jobs in 2010 and may support nearly 870,000 by 2015.<sup>132</sup> SLNG's Project is part

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<sup>131</sup> President Barack Obama, State of the Union Address (Jan. 24, 2012), *available at* <http://www.whitehouse.gov/the-press-office/2012/01/24/remarks-president-state-union-address>.

<sup>132</sup> IHS GlobalInsight, *The Economic and Employment Contributions of Shale Gas in the United States* (Dec. 6, 2011), *available at* <http://press.ihs.com/press-release/energy-power/shale-other-unconventional-natural-gas-supports-more-1-million-us-jobs-to>.

of the demand for this national effort and will provide demand to stimulate this burgeoning aspect of the national economy.

The Secretary of Energy, Dr. Steven Chu, also has issued statements supporting the export of the LNG. Commenting on LNG exports, Secretary Chu stated: “Exporting natural gas means wealth comes into the country.” He further stated: “We have a choice. If we are buying, that is wealth out of the country. If we are selling, that’s wealth into the country.”<sup>133</sup> Supporting Dr. Chu’s comments are two former energy secretaries, Bill Richardson and Spencer Abraham, who also recently voiced their support for LNG exports: “Exports can buttress U.S. geopolitical leadership and trade, while at the same time continuing to support low domestic natural gas prices and a renaissance in domestic manufacturing.”<sup>134</sup> The former energy secretaries also stated that “By becoming an exporter, the U.S. would fill a vital role for its allies in Europe and Asia, many of which are dangerously dependent for natural gas on foreign powers frequently hostile to U.S. interests. Reliance on Russian gas in Ukraine and the EU would be likely to diminish, for example.”<sup>135</sup> Furthermore, based on a recently-issued Senate report,<sup>136</sup> Senator Richard Lugar has introduced legislation to facilitate LNG exports by placing other members of the North Atlantic Treaty Organization on the same footing as FTA countries.

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<sup>133</sup> Simone Sebastian, *Energy Secretary Backs Natural Gas Exports*, Houston Chronicle, Feb. 2, 2012, available at, <http://www.chron.com/business/article/Energy-secretary-backs-natural-gas-exports-2973215.php>.

<sup>134</sup> Bill Richardson, Spencer Abraham, *Shale gas exports will aid US and its allies*, Financial Times, Dec. 20, 2012, available at <http://www.ft.com/cms/s/0/d634d316-4a0f-11e2-a7b1-00144feab49a.html>

<sup>135</sup> *Id.* See also Editorial Board, *Sending Natural Gas Abroad*, New York Times (Dec. 15, 2012), available at <http://www.nytimes.com/2012/12/16/opinion/sunday/sending-natural-gas-abroad.html> (supporting LNG exports).

<sup>136</sup> Minority Staff of the S. Comm. On Foreign Relations, *Energy and Security from the Caspian to Europe* (Dec. 12, 2012).

5. Approval of the Project Will Have Minimal Impact on Domestic Natural Gas Prices

Sierra Club suggests that the Project will increase natural gas prices and that such increases are inconsistent with the public interest.<sup>137</sup> While the Project may have a positive impact on the price of natural gas, that does not necessarily mean the Project is inconsistent with the public interest. In fact, the DOE/FE in *Sabine Pass* concluded that the export authorization would result in a “modest increase” in domestic gas prices that would not be inconsistent with the public interest.<sup>138</sup>

By way of background, prices of natural gas in 2010 averaged \$4.52 per Mcf, nearly 38% lower than the 5-year average from 2005 through 2010 of \$7.77 per MMBtu, and just over half of the average price for 2008, \$8.86 per MMBtu.<sup>139</sup> Prices have continued to drop and are expected to stay low. The AEO2013 Report found that the Henry Hub spot price will remain below \$4 per MMBtu through 2018, and reaching \$5.40 per MMBtu by 2030 and \$7.83 per MMBtu in 2040 (in 2011 dollars). Importantly, the AEO2013 projection includes LNG exports starting in 2016.<sup>140</sup>

In light of this background, the Navigant Market Analysis Study submitted with SLNG’s export application analyzed the impact of the Project on certain natural gas prices, and it concluded that the addition of the Project would result in a \$0.14 per MMBtu increase for Henry Hub prices, a 2.7% difference. Moreover, when considered as a percentage of the overall residential retail rate, the \$0.14 represents an even smaller percentage because of the additional

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<sup>137</sup> Sierra Club Protest at 52.

<sup>138</sup> DOE/FE Order No. 2961 at 29.

<sup>139</sup> Energy Information Administration, *Natural Gas Year-in-Review with Data for 2010*, at pp. 1,2 (Dec. 9, 2011), available at <http://www.eia.gov/naturalgas/review/archive/ngyir2010/index.cfm>.

<sup>140</sup> AEO2013 Report at 5.



costs to consumers from the distribution utility for pipeline, storage, and distribution system costs, as well as the utility rate of return. For example, a consumer in Georgia pays an additional \$2.65 per MMBtu on top of the cost of gas for natural gas service, rendering the \$0.14 change only a 1.8 percent increase of an average total cost of \$7.84 per MMBtu.<sup>141</sup>

The NERA Study concludes that market forces will install a cap on domestic natural gas prices because “importers will not purchase U.S. exports if the U.S. wellhead price rises above the cost of competing supplies.”<sup>142</sup> Sierra Club claims that the Navigant Market Analysis Study should include the export capacity of all the pending LNG export applications, that is 27.58 Bcf/day.<sup>143</sup> This would be inaccurate. As contemplated in the NERA Study and the EIA Study, not all the export terminals would be permitted, financed, and constructed because market forces would serve to limit the significant investment in such a facility.<sup>144</sup> The cumulative effects on multiple LNG export projects on domestic natural gas prices, while positive, are not substantial. As identified in the NERA Study, in the reference case the effect of LNG exports will result in a wellhead price of \$6.30 per MMBtu in 2035 (2010 dollars).<sup>145</sup> Similarly, the Navigant Market Analysis Study concluded that the Henry Hub price in 2035 under the Aggregate Exports Case would reach \$7.04 per MMBtu, representing a 5.7 percent change.<sup>146</sup>

The price effects projected by the Navigant Market Analysis Study are properly viewed as modest and well below the threshold to overcome the presumption that LNG exports are in the public interest.

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<sup>141</sup> Navigant Market Analysis Study at 47.

<sup>142</sup> NERA Study at 6.

<sup>143</sup> Sierra Club Protest at 52-53.

<sup>144</sup> NERA Study at 3, 35-39; EIA Study at 3-5.

<sup>145</sup> NERA Study at 48.

<sup>146</sup> Navigant Market Analysis Study at 53.

## 6. Sierra Club's Views are not Representative of the Public Interest

Sierra Club's broadside against natural gas production and LNG exports is myopic and outside the mainstream. The shale gas revolution has dramatically lowered natural gas prices, resulting in savings to the American consumer and providing a needed economic stimulus in the face of uncertain economic times. As explained above, exporting LNG may have some effect on natural gas prices, but those effects are relatively minor and are surpassed by the fact that natural gas prices will remain historically low due to increased production.

Like the APGA, Sierra Club struggles with several fundamental supply and demand realities. Low natural gas prices incentivize LNG exports, which constitute an increase in demand, but low natural gas prices also cause producers to curtail production because the low prices have proved uneconomical. For example, several major producers have announced cut-backs in their drilling plans.<sup>147</sup> Studies have also shown that the combination of reduced drilling and delayed completions in response to low gas prices will stem the rising tide of U.S. production growth.<sup>148</sup> LNG exports will stimulate demand, helping to provide continuity of development of gas production and the reduction of volatility in pricing and production.<sup>149</sup> However, any increase in domestic natural gas prices will dampen the incentive to export LNG. This natural, market-driven feedback mechanism helps show that the Navigant Study and the NERA Study were correct in assuming that LNG exports will not reach amounts even close to those identified in the cumulative pending LNG export applications.

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<sup>147</sup> See, e.g., Sharon Epperson, *Production Shut-Ins Fuel Natural Gas Spike*, CNBC.com, Jan. 25, 2012 (citing natural gas well shut-in announcements by Chesapeake Energy, Occidental Petroleum, and Conoco Phillips); available at [http://www.cnbc.com/id/46133729/Production\\_ShutIns\\_Fuel\\_Nat\\_Gas\\_Spike](http://www.cnbc.com/id/46133729/Production_ShutIns_Fuel_Nat_Gas_Spike).

<sup>148</sup> See, e.g., Wood McKenzie North American Gas Service, *Short-term drilling and production how much response to low gas prices?* (Feb. 2012).

<sup>149</sup> See Navigant Market Analysis Study at 35.

Emblematic of Sierra Club’s effort to stop the use of natural gas is the ongoing “Beyond Gas” campaign. In Sierra Club’s “Dirty, Dangerous, and Run Amok” program, Sierra Club claims that abundant natural gas is not in the public interest because it delays the transition to renewable energy resource, which struggle to compete with generation fueled by low-priced natural gas.<sup>150</sup> This position is directly contradictory to Sierra Club’s arguments here that higher natural gas prices are not in the public interest. These contradictory arguments demonstrate that the Sierra Club is not opposing a particular LNG export project, but is more generally opposing the use and production of fossil fuels, like natural gas.<sup>151</sup>

Similarly, Sierra Club claims that a shift in employment sectors from manufacturing to natural gas-related jobs will be caused by LNG export projects, and that this shift is inconsistent with the public interest.<sup>152</sup> With this argument, Sierra Club is apparently trying to protect domestic manufacturing employment, an industry that, in part, relies of low natural gas prices to remain competitive internationally. Yet, at the same time, Sierra Club seeks to stop all natural gas production, irrespective of any resulting price increases.<sup>153</sup> The DOE/FE should reject these contradictory and disingenuous arguments.

*F. The Administrative Record Before DOE is Adequate*

Sierra Club claims the record supporting the benefits claimed by SLNG is “extraordinarily thin” and the DOE/FE cannot approve SLNG’s application because Sierra Club

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<sup>150</sup> Sierra Club, *Look Before the LNG Leap: Why Policymakers and the Public Need Fair Disclosure Before Exports of Fracked Gas Start*, 16, available at <http://www.sierraclub.org/naturalgas/downloads/LOOK-BEFORE-YOU-LEAP.pdf>.

<sup>151</sup> Symbolic of Sierra Club’s broader tirade against natural gas, Sierra Club responds to arguments raised by *other* project applicants, not SLNG, that exporting LNG will benefit the environment by supplanting coal and fuel for electricity generation. Sierra Club Protest at 59.

<sup>152</sup> Sierra Club Protest at 64-66.

<sup>153</sup> Robert Mann, Sierra Club President, *Beyond Gas*, (“Fossil fuels have no part in America’s energy future....”), available at, <http://content.sierraclub.org/naturalgas/>.

has allegedly shown there are defects in SLNG's supporting studies and natural gas production will have "major environmental (and, hence, additional economic) costs."<sup>154</sup> This is false. As shown above, FERC will be taking the lead on assessing the environmental impacts of the Project and DOE/FE does not need to develop an administrative record on any environmental impacts to issue a conditional order.<sup>155</sup> Furthermore, SLNG has submitted information and project-specific studies demonstrating the numerous economic, trade, and geopolitical benefits that would flow from the Project. Sierra Club raises almost entirely generic complaints associated with natural gas production, which are not sufficiently reasonably foreseeable to be addressed here. Moreover, Sierra Club's challenges to SLNG's studies do not affirmatively rebut the presumption that the Project is in the public interest as Sierra Club must present data or evidence to the contrary; it has not done so. Finally, with the issuance of the NERA Study, the DOE/FE has yet another study, concluding that exporting LNG will provide a net economic benefit to the country, on which to rely for its decision. The administrative record is adequate, and the DOE/FE should reject Sierra Club's assertion.

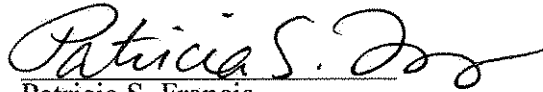
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<sup>154</sup> Sierra Club Protest at 70.

<sup>155</sup> When issuing a final order on the SLNG Application, DOE/FE will consider the administrative record developed by FERC and FERC's resulting conclusions. *See, e.g.*, DOE/FE Order No. 2691-A at 27-28.

**WHEREFORE**, in consideration of the foregoing, Southern LNG Company, L.L.C. respectfully requests that the DOE/FE reject APGA's and Sierra Club's motions to intervene and protest and issue an order consistent with the above comments.

Respectfully submitted,



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/s/ Kirstin E. Gibbs

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*Counsel for Southern LNG Company, L.L.C.*

January 2, 2013

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

Southern LNG Company, L.L.C. )

FE Docket No. 12-100-LNG

VERIFICATION

Pursuant to 10 C.F.R. § 590.103(b), Patricia S. Francis, being duly sworn, affirms that she is authorized to execute this verification, that she has read the foregoing document, and that all facts stated herein are true and correct to the best of her knowledge, information and belief.

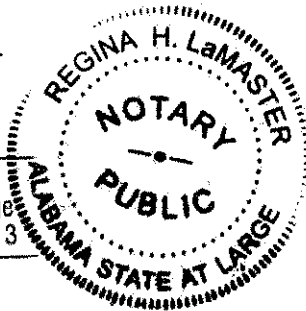
Patricia S. Francis  
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Southern LNG Company, L.L.C.  
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Birmingham, AL 35209

STATE OF ALABAMA )  
COUNTY OF JEFFERSON )

Sworn to and subscribed before me, a Notary Public, this 2nd day of January, 2013, by Patricia S. Francis, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Notary Public

REGINA H. LaMASTER  
Notary Public, Alabama State At Large  
My Commission Expires Jan. 27, 2013



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

**Southern LNG Company, L.L.C.**

)

**FE Docket No. 12-100-LNG**

**CERTIFICATED STATEMENTS OF AUTHORIZED REPRESENTATIVE**

Pursuant to 10 C.F.R. § 590.103(b), I, Patricia S. Francis, hereby certify that I am a duly authorized representative of Southern LNG Company, L.L.C.; and that I am authorized to sign and file with the Department of Energy, Office of Fossil Energy, on behalf of Southern LNG Company, L.L.C., the foregoing documents and in the above-captioned proceeding.

Dated at Birmingham, Alabama, this 2nd day of January, 2013.

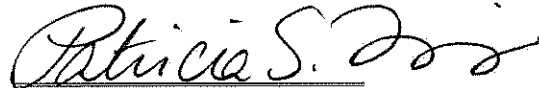


Patricia S. Francis  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon all parties in this docket and on DOE/FE for inclusion in the FE docket in the proceeding in accordance with 10 C.F.R. § 590.107(b)(2012).

Dated at Birmingham, Alabama, this 2nd day of January, 2013.



Patricia S. Francis  
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