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



**In the Matter of:
GULF COAST LNG EXPORT, LLC**

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Docket No. 12-05 LNG

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF GULF COAST LNG
EXPORT, LLC TO MOTION FOR LEAVE TO INTERVENE AND PROTEST OF
THE AMERICAN PUBLIC GAS ASSOCIATION**

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Pursuant the Department of Energy’s (“DOE”) regulations,¹ Gulf Coast LNG Export, LLC (“Gulf Coast”), hereby submits this Response to The American Public Gas Association’s (“APGA”) Motion for Leave to Intervene and Protest, filed on August 3, 2012. Furthermore, the APGA’s Protest claims are not relevant to Gulf Coast’s proposed exports to countries with which the United States has a Free Trade Agreement that covers natural gas (“FTA”). In reference to Gulf Coast’s request to export LNG to non-FTA countries, the APGA’s Protest fails to overcome the presumption that Gulf Coast’s proposed exports are in the public interest. As explained below, APGA’s Protest should be denied and given no weight.

I.

INTRODUCTION

A. Description of Gulf Coast’s Application

In January of 2012 Gulf Coast filed an application with the Office of Fossil Energy (“FE”) of the Department of Energy (“DOE”) under section 3 of the Natural Gas Act (“NGA”),

¹ 10 C.F.R. § 590.303(e) and 590.304(f) (2010).

15 U.S.C. 717b, for long term, multi-contract authorizations to export liquefied natural gas (“LNG”) from domestic sources. Gulf Coast is a limited liability company, formed in Delaware, with its principal place of business in Houston, Texas. It is principally owned by Michael Smith, the founder and Chairman and CEO of Freeport LNG Development, L.P. Mr. Smith has decades of experience in the natural gas business and substantial experience in the LNG aspect of the natural gas business. In its application Gulf Coast expressly stated that rather than long term natural gas supply or LNG export contracts, it would primarily utilize Liquefaction Tolling Agreements (“LTAs”) pursuant to which individual customers, who hold title to the natural gas will have the right to deliver that gas to Gulf Coast. Gulf Coast will provide liquefaction service and the customer will then receive its natural gas as LNG. In today’s market, LTAs perform the role of long term supply contracts in that they provide long term stable commercial arrangements for LNG export. Gulf Coast also requested authorization to register each LNG title holder and provide other supporting arrangements and documentation. The practice of filing contracts after DOE/FE has granted an export permit has been a long established practice.²

Obviously the specific location of the future natural gas supply cannot now be determined. However, it will come from the interconnected and highly liquid domestic market for natural gas in the United States. It is likely to come from a diverse mixture of sources determined once future customers of Gulf Coast enter into their purchase agreements with producers, marketers and others in the years to come.

² See *Yukon Pacific Corporation*, ERA Docket No. 87–68–LNG, Order No. 350 (November 16, 1989); *Distrigas Corporation*, FE Docket No. 95–100–LNG, Order No. 1115, at p. 3 (November 7, 1995); See also Freeport LNG Expansion and FLNG Liquefaction, LLC, FE Docket No. 10–160–LNG, Order No. 2913 at 9–10 (February 10, 2011).

In its application Gulf Coast indicated that it proposes to construct four LNG liquefaction trains capable of liquefying up to 2.8 Bcf/d of natural gas, as well as associated LNG storage tanks, a pipeline connection system to connect to natural gas transportation lines, a marine berth and associated utilities. The volume requested is equivalent to 1,022 Bcf of natural gas per year for a term of 25 years. The two requests for export authorization are for authorization to export LNG to: (1) any country with which the United States has now or in the future has a FTA³ covering natural gas/LNG⁴; and (2) any other country which has or in the future develops the capacity to import LNG via ocean carriage, provided trade with such country is not prohibited by U.S. law or policy.⁵

As will be discussed in detail below, requests to export to FTA countries are governed by section 3(c) of NGA and must be granted by DOE/FE without delay or modification. Requests to export LNG to non-FTA countries are governed by section 3(a) of NGA and are presumed to be in the public interest and must be granted unless it is determined after hearing that such exports are inconsistent with the public interest. In its application Gulf Coast provided substantial additional data confirming that the requested exports are in the public interest and should be approved. (Please refer to the application for additional information). Gulf Coast has requested that it be authorized to export LNG volumes in the full volume requested by Gulf

³ Currently the countries with FTAs with the United States include: Australia, Bahrain, Costa Rica, Dominican Republic, Columbia, El Salvador, Guatemala, Honduras, Nicaragua, Chile, Morocco, Canada, Mexico, Oman, Peru, Singapore, Israel, Jordan and South Korea. However, the agreements with Costa Rica and Israel do not include natural gas.

⁴ Section 3(c) of the NGA eliminated any public interest analysis DOE of LNG export applications to FTA countries.

⁵ The standard of review under section 3 (a) of NGA requires that “the [secretary] shall issue such order upon application, unless after opportunity for hearing, [he] finds that the proposed exportation or importation is not consistent with the public interest.”

Coast or alternatively in volumes DOE determines to not be inconsistent with the public interest.⁶

B. DOE Regulations on Sufficiency of Application.

Upon receipt of an application for LNG exports, the DOE/FE reviews the application for sufficiency under the applicable regulations.⁷ Among other things, DOE requires that the applicant demonstrate that it has taken meaningful and sufficient steps to establish sufficient business relationships essential for the performance of the proposed export of LNG. If the application is deemed to be deficient, the Assistant Secretary's delegate may require additional submittals or dismiss the application without prejudice.⁸ The arrangements between Gulf Coast and the Brownsville Navigation District of Cameron County, Texas ("Brownsville") are subject to a confidentiality requirement. That agreement was submitted to DOE/FE. This demonstrated the commercial relationship between Gulf Coast and Brownsville which is where the LNG export facilities will be constructed and is the site of the export. Because of the confidentiality requirements in the agreement, Gulf Coast did request that the agreement be treated as confidential and not posted in the public record. However, at the request of DOE, the parties to the agreement reached an accord to waive that confidentiality requirement and therefore on May 16, 2012, a redacted version of the agreement was submitted to be posted in the public record. At that time, DOE determined that the Gulf Coast application was complete.⁹

⁶ Gulf Coast application – FE Dkt. No. 12-05-LNG.

⁷ 10 CRF section 590.201, et seq

⁸ 10 CFR 590.203.

⁹ Federal Register, Vol. 77, No. 107.

C. Federal Register Notice.

Once an application is deemed complete, DOE/FE is required to publish a notice of the application in the Federal Register. The notice was published on June 4, 2012. In its notice, the DOE/FE confirmed that the application had been deemed complete.¹⁰ The applicable regulations require that a comment period be provided of not less than 30 days.¹¹ In this instance, DOE authorized a comment period of up to 60 days, that is no later than 4:30, eastern time, Friday August 3, 2012. A large number of supporting letters were thereafter filed with DOE. On the last day of the 60 day comment period, APGA filed its motion for leave to intervene and protest. This filing is the response of Gulf Coast to that APGA filing.

D. General Overview of the Motion to Intervene and Protest by APGA.

APGA states that it is an association of public natural gas distribution companies. In its motion and protest, APGA states that its members are “active participants in the domestic market for natural gas”.¹² In other words, APGA states that its members are competitors of Gulf Coast as well as the future customers of Gulf Coast. It appears from its protest that the main objective of APGA is to reduce competition in the market place and to advocate federal government policies and action intended to drive down natural gas prices as far as possible for the benefit of APGA members. This objective is both misguided and short sighted. The development and maintenance of a long term and robust natural gas market is enormously important to the United States on many different levels, and is in the best long term interest of APGA member companies. As discussed below, the specific objects and concerns articulated by APGA in its filing are equally misguided, incorrect or ill-informed. They present no basis to delay or deny

¹⁰ Federal Register, vol. 77, No. 107, p. 32962.

¹¹ 10 CFR section 590.202(a).

¹² APGA Motion to Intervene and Protest (“APGA”), p. 2.

any aspect of the requests made by Gulf Coast in its application.

II.

THE GULF COAST APPLICATION IS LEGALLY COMPLETE AND SUFFICIENT

In its protest, APGA argues that the Gulf Coast application is insufficient for LNG exports to FTA countries.¹³ This assertion is frivolous. (However, as APGA does correctly assert, pursuant to NGA section 3(c), the DOE/FE must deem Gulf Coast's application to export "to be consistent with the public interest" and the application must be "granted without modification or delay."¹⁴) As discussed above, there has already been a determination by DOE/FE that the application is sufficient and complete. The DOE/FE notice in the Federal Register confirmed such determination. The issue is moot.¹⁵

In addition, APGA argues that because a LNG terminal at Brownsville has not already been constructed, the application should be denied.¹⁶ There is no requirement that an LNG facility be constructed prior to filing an application with DOE/FE to export LNG, whether to FTA or to non-FTA countries. In fact, pending applications for the export of domestic LNG do not have already in place all relevant export facilities. Each requires FERC authorization under section 3 of the NGA before those facilities can be constructed. Furthermore, the well established procedural practice of FERC for the review of an application to construct LNG export facilities is to not process such applications until after DOE/FE has conditionally approved the export. This is precisely what occurred with the Sabine Pass project.¹⁷ APGA also

¹³ APGA, *supra*, p. 5.

¹⁴ 15 U.S.C. Section 717(c); *see* APGA, page 5.

¹⁵ Federal Register, *supra*.

¹⁶ APGA, *supra*, p 5.

¹⁷ FERC, Dkt. No. CP11-72-001, Order Denying Hearing and Stay, July 26, 2012.

attacks the use of LTAs, but without clearly articulating any reason for such. In any event, the use of LTAs has already been sanctioned by the DOE/FE. It is an accepted business practice.¹⁸

Other arguments by APGA are even less relevant to this proceeding. For instance, contrary to the argument by APGA there is no requirement that an applicant have a long history of LNG exports of domestic gas. If there was such a requirement, no application could be entertained since historically such exports have not occurred. Furthermore, as already discussed above, the principal of Gulf Coast does in fact have a very substantial history in the natural gas and LNG business, although that is also not a requirement for the sufficiency of an application. APGA also argues that the application should be denied because Gulf Coast was founded by a small group of people and has chosen to not yet post a website.¹⁹ There is simply no requirement that an applicant be a “large” corporation or create a website. Suggestions of that nature border on the trivial. (Yahoo, Ford, Microsoft, Facebook, Apple, and Google are but a few companies that started in a similar posture.)

It is also argued by APGA that the application is somehow insufficient because it does not pin point “the source of natural gas to be exported”.²⁰ Not only is this not required, to attempt to do so would be purely speculative. Both FERC and the DOE/FE have already so concluded.²¹ Customers of Gulf Coast with LTAs will determine where they will purchase their natural gas within the highly liquid domestic natural gas market. Nothing more need be said on that topic.

¹⁸ DOE/FE Dkt. No. 10-160-LNG, Order 2913 issued February 10, 2011.

¹⁹ APGA, *supra*, p. 6.

²⁰ APGA, *supra*, p 6.

²¹ See the Sabine FERC and DOE/FE decisions; *Coalition for Responsible Growth and Resource Conservation, Damascus Citizens for Sustainability and Sierra Club v. United States Federal Energy Regulatory Commission*, 2nd Cir. Summary Order (12-556g), June 12, 2012 (Copy attached hereto and served upon all parties in this proceeding in accordance with Local Rule 32.1.1.).

In addition, APGA's criticism of the Gulf Coast application on the grounds that it does not provide an analysis of total LNG exports is without merit. Neither is it required nor possible since it cannot be determined what volumes will be authorized by DOE nor what projects will ultimately be constructed or when. (LNG projects are very difficult to finance and construct. For instance, it should be noted that only a small percent of the LNG import terminals that applied for authorization two decades ago were ever constructed.)

III.

APGA HAS FAILED TO OVERCOME THE REBUTTABLE PRESUMPTION UNDER SECTION 3(A) OF NGA THAT THE PROPOSED GULF COAST LNG EXPORTS TO NON-FTA COUNTRIES ARE IN THE PUBLIC INTEREST

The standard of review of requests for authorization to export LNG to non-FTA countries is section 3(a) of NGA. That provision of the law establishes a rebuttal presumption that the export of LNG is in fact in the public interest. As a consequence, DOE must approve the application for export "unless those who oppose the application overcome that presumption."²² Since APGA opposes the pending application, it has the burden of overcoming the presumption that the requested export is in the public interest. In other words, APGA must present a persuasive affirmative demonstration that the export is inconsistent with the public interest. For the reasons stated herein, APGA has failed to do so.²³

APGA provides four inaccurate claims for its assertion that the Gulf Coast application to export LNG to non-FTA countries is "inconsistent with the public interest", namely: (1) "incomplete application"; (2) the export "will increase domestic natural gas and electricity

²² DOE/FE Order No. 2961, p. 28.

²³ *Panhandle Producers and Royalty Owners Association v. ERA*, 822 F.2d 1105, 111 (D.C. Cir. 1987); *Phillips Alaska Natural Gas Corporation and Marathon Oil Company*, 2 FE 70, 317; DOE/FE Order 1473.

prices”; (3) the export will “limit natural gas” when the nation has an opportunity to “forge a path toward energy independence”; and (4) Gulf Coast “will fail to compete with natural gas exports by other nations.”²⁴ None of these four assertions provide any support for APGA’s argument that the application is inconsistent with the public interest.

The first of these claims, namely that the application is somehow “incomplete”, has already been addressed. As demonstrated above, that issue has long been moot. The application is complete and the DOE/FE has so determined. In addition, the DOE/FE confirmed that determination and published its determination in the federal notice it published on the application in the Federal Register. Nothing more need be said.

The second claim by APGA, namely that LNG exports will increase the price of domestic natural gas, does not equate to an inconsistency with the public interest. As discussed above, APGA appears to assume that all pending applications for export will be approved, financed and constructed. Perhaps more importantly, APGA assumes this will all occur within the same time horizon with immediate sustained operations at fully permitted levels. This is simply unrealistic. It is also worth noting that in its protest and analysis, APGA unrealistically assumes that all applications for LNG export will become fully operational at maximum authorized capacity during a relatively short time horizon. This will not occur. That is not the real world in which we must operate and make decisions. Therefore the APGA discussion about the “total applied for export capacity” is not germane and does not illuminate the record.²⁵

²⁴ APGA, *supra*, pgs. 6-7.

²⁵ APGA, *supra*, pgs. 4-5.

APGA states that the Gulf Coast LNG export will “singlehandedly increase total domestic demand for natural gas by 3.9% in 2018.”²⁶ As discussed in the Gulf Coast application, “(t)he results of the analysis in the Deloitte Report demonstrate that the magnitude of LNG exports, while substantial on their own, are not very significant relative to the entire U.S. resource base or total U.S. demand.”²⁷ The requested volume is, however, a particularly important factor in reducing the U. S. balance of payment deficit, creating jobs, and generating additional tax revenue to cash strapped governmental entities on all levels of government.

Although projections of the EIA Annual Energy Outlook 2012 (“AEO 2102”) are subject to significant variables outside the scope of the EIA review, the report notes that compared to the EIA Annual 2011 report, the 2012 report shows significant growth in natural gas production in the so called Reference case due to recent technologies. (The projected contributions of shale gas range from 5.0 trillion cubic feet per year in 2010 to 13.6 trillion cubic feet per year in 2035.)²⁸ Furthermore, as the Deloitte study correctly concluded, “the North American natural gas market is highly integrated and all segments will work together to mitigate price impacts of demand changes from LNG exports like the Export Authorization.”²⁹ Furthermore, any change in the well head price of natural gas up or down does not equate to an equivalent change in consumer prices, particularly for residential and commercial customer. Besides the well head price of natural gas, there are the interstate transportation costs, as well as the cost of the local distribution system. These frequently include added costs of social programs that are reflected in the customer bill. Therefore, an increase in the well head price of gas will only result in a much

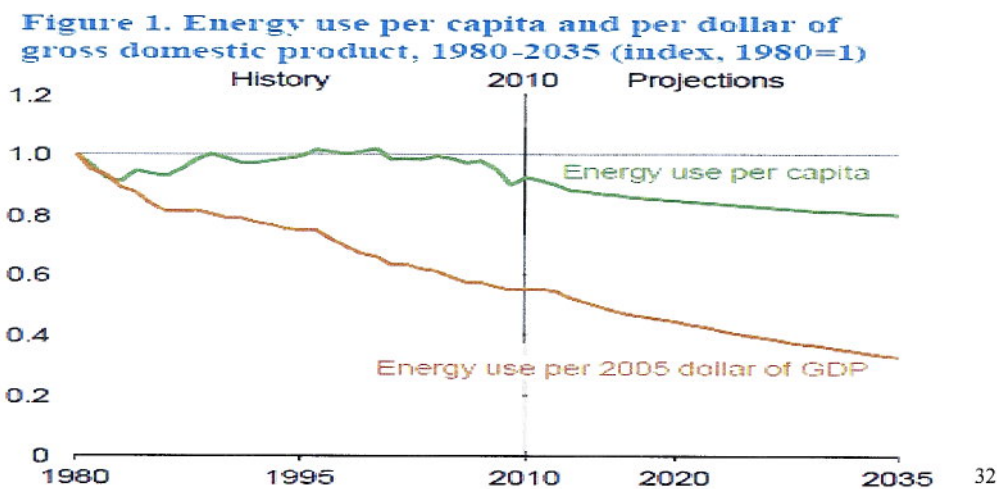
²⁶ APGA, *supra*, p. 8.

²⁷ Gulf Coast p. 13.

²⁸ AEO 2012, p. 3.

²⁹ Deloitte p. 10.

smaller increase in the residential or commercial customers cost. As the EIA correctly observed,“(T)he percentage change in prices that industrial and electric customers pay tends to be somewhat lower than the change in the wellhead price. The percentage change in prices that residential and commercial customers pay is significantly lower.”³⁰ In addition, the energy use per capita and per dollar of the GDP continues to decline. Energy conservation and efficiencies will continue to reduce per capita and per GDP dollar. Under all reasonable scenarios, the United States has more than sufficient natural gas to meet domestic needs without materially affecting consumer prices over the entire 25 year period of the Gulf Coast exports expected to commence in 2018.³¹



In a free market economy, the “supply-demand” relationship functions to balance supply and demand. [In that context, any use of natural gas, including the current and future usage by APGA members, should have an upward impact on natural gas prices if there is a static supply. If additional supply is added, then downward price pressure results.] That does not mean

³⁰ “Effect of Increased Natural Gas Exports on the Domestic Energy Market issued January 2012 (“EIA Export Report”), p. 7.

³¹ AEO 2012, supra note 20 p. 115, Table A1.

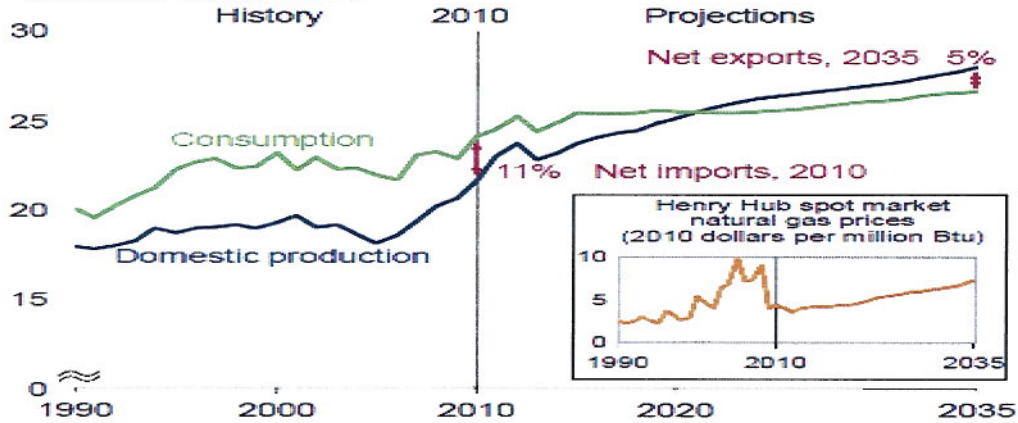
³² EIA Export Report.

however that any usage is inconsistent with the public interest. Furthermore, an insufficiently robust market for domestic natural gas will reduce the incentive for producers to produce natural gas, particularly if there are sustained low prices. As the EIA noted in its 2012 Annual Report, “U.S. natural gas prices are determined largely by supply and demand conditions in North American markets. At current (2012) price levels, natural gas prices are below average replacement costs.”³³ When wellhead prices are below the replacement costs, reserves are not replaced until and unless prices rise adequately to justify the investment and operational cost. Dry gas reserves are particularly vulnerable because they do not produce liquids which can be separately marketed to at least partly ameliorate the adverse effect of such low natural gas prices.

The third claim of APGA, namely its suggestion that exports of natural gas will “limit natural gas” at a time when the United States could move towards greater energy independence deserves mention. In the absence of LNG exports, the domestic demand for natural gas, which as noted above is currently “below replacement costs,” could be inadequate to support the necessary production of natural gas which in turn could adversely affect United States energy independence. In other words in the absence of LNG exports, if prices are inadequate because demand is inadequate, reserves will not be produced and the nation’s available gas supply will decline. However, contrary to the assertion of APGA, it is the conservative conclusion of the EIA that even if gas imports from Canada decline, United States domestic production of natural gas supports LNG exports.

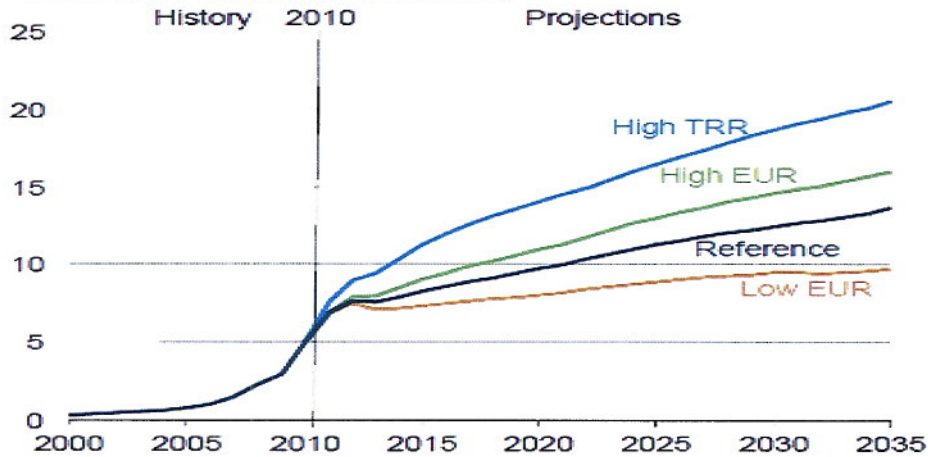
³³ AEO 2012, p. 91.

Figure 4. Total U.S. natural gas production, consumption, and net imports, 1990-2035 (trillion cubic feet)



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Figure 56. U.S. production of shale gas in four cases, 2000-2035 (trillion cubic feet)



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The fourth claim by APGA is that LNG exports will not be able to compete with non-United States LNG exports, particularly from countries where such exports will receive significant government support. APGA also indicates that the future development of non-U.S. exports of LNG will mean that “Gulf Coast’s plan to export LNG will not prove economically viable.”³⁶ This APGA argument is difficult to understand. If that assumption were true,

³⁴ EIA Export Report.

³⁵ EIA Export Report.

³⁶ APGA, supra, p. 4.

presumably APGA would welcome a future where United States LNG exports did not occur because that was not economical. In any event, such an assertion by APGA does not suggest in any way that granting the application of Gulf Coast for LNG exports to non-FTA countries is inconsistent with the public interest.

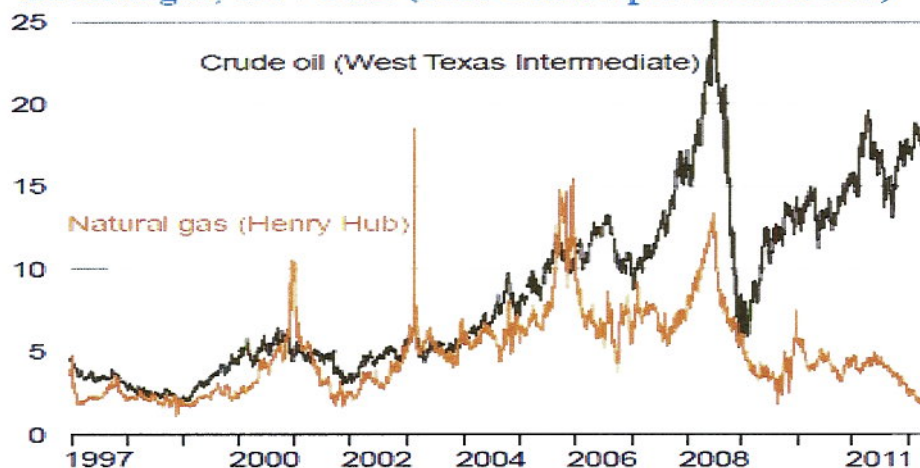
Suffice it to say, the best defense to such a risk is for the expedition approval of the Gulf Coast request for authorization to export LNG. Undue delays will admittedly provide non-United States competitors with certain advantages as they enter the global market. Expeditious approval of the pending request ameliorates the business risks. However, the argument by APGA on this point appears to be a bit disingenuous. A party genuinely concerned about such a risk would therefore urge the DOE/FE to expeditiously approve the request for LNG export without delay and enhance the likelihood that the economy will realize the full and significant jobs, economic stimulus, trade balance improvement, revenues and other benefits that will be generated by the project. More importantly, those risks are business risks, just like financing, labor, contractual matters and other business risks. In our economic system, such risk are borne by the applicant/investor, namely Gulf Coast,. They are not be part of the public interest evaluation by DOE/FE.

Inconsistent with the above argument, APGA also asserts that if other nations compete with the United States in the global LNG market “U.S. natural gas prices will increase,” and “international and domestic prices will converge.” APGA predicts a host of negative results including that “Gulf Coast’s exports will not prove economical.”³⁷ Not surprisingly, APGA does not provide any support for these assertions. If in fact global competition made U. S. LNG export uneconomical, the likely result would be that the U. S. LNG exports would not occur and

³⁷ APGA, p. 15.

domestic gas prices would certainly not be drawn to the international price of LNG delivered to foreign markets. Furthermore, while oil prices do respond to global markets, it is clear that natural gas prices in the United States do not.

Figure 34. U.S. spot market prices for crude oil and natural gas, 1997-2012 (2010 dollars per million Btu)



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IV.

EIA EXPORT REPORT

APGA relies heavily upon the Annual Energy Outlook 2012 with Projections to 2035 (“EIA Export Report”) to support its argument. Unfortunately, APGA misunderstands the conclusions and limitations of that report. The EIA analysis is limited strictly to the four specific scenarios it was directed to review. Furthermore, that report is intended to be only an input for a broader and more complete analysis to be released shortly by DOE/FE. The EIA itself acknowledged these limitations when in the report’s Preface it stated: “The projections in this report are not statements of what *will* happen but of what *might* happen, given the assumptions and methodologies used.”³⁹ The APGA does criticize the EIA Export Report as being unduly

³⁸ EIA Export Report.

³⁹ EIA Export Report, p. ii.

conservative in not including how United States domestic natural gas prices will be affected by foreign-global markets.⁴⁰ This criticism is unfair. EIA paid considerable attention to global issues.⁴¹ However, its model is a U.S. model not intended to model non U.S. global prices. Nevertheless, there is no evidence that non-U.S. gas prices affect U.S. domestic gas prices and APGA certainly does not provide any support for that concept. It is not “unduly conservative” of EIA to not consider an alleged factor that has no impact in its analysis.

APGA further criticizes the EIA Export Report for allegedly not considering “pending coal plant retirements” and “future” increased regulation of hydraulic fracturing. First, EIA did in fact consider the retirement of coal plants.⁴² Second, as EIA correctly states in the Preface to the EIA Export Report, the EIA is an independent statistical and analytical agency. Its views should not be construed as the views of any other agency, including DOE. Its analysis is a “business-as-usual” trend analysis. It does not assume future changes in policy, laws or regulations. EIA does not “speculate on future legislative and regulatory changes.”⁴³

In its protest, APGA uses several alarmist terms such as “inflated prices” for natural gas, “spiking electricity rates,” and assertions that LNG export will “turn against cleaner burning natural gas.” APGA seems to cite to the EIA Export Report as support for these assertions. However, a close reading of the EIA Export Report does not support those APGA assertions. In fact, those terms are not employed in the report at all.⁴⁴ In the same vein, APGA cites the report

⁴⁰ APGA, pgs 11-12.

⁴¹ EIA Export Report.

⁴² EIA Export Report.

⁴³ EIA Export Report, p. ii.

⁴⁴ APGA, p. 13.

of the Brookings Institute Report⁴⁵ for the proposition that if DOE/FE authorized LNG exports, “many jobs” may be destroyed.⁴⁶ This is not a fair reading of the Brookings Institute Report. The statement and alleged conclusion APGA attributes to the Brookings Institute Report is not its own analytical conclusion. The Brookings Institute Report merely recounts and quotes the position of one chemical company that utilizes natural gas. Like all manufactures, it obviously has an interest in the lowest cost it can achieve for all aspects of its operations. In addition, the natural gas price increase that company references as a basis for its position was an increase of 167 percent.⁴⁷ Surely nothing of that magnitude is even remotely conceivable as a result of LNG exports even if all pending LNG applications were approved, built and fully operational simultaneously. Furthermore, the CEO of that company is on record having expressed tempered support for LNG exports of up to 15 percent of the U.S. natural gas production.

The treatment by APGA of MIT’s report “*The Future of Natural Gas*” is also puzzling.⁴⁸ Apparently APGA is advocating that the United States exports its state of the art hydraulic fracturing technology to other countries so they can develop their own shale gas resources in competition with United States sourced LNG. The argument seems to be that the United States policy should prohibit United States companies from capitalizing on United States superior technology and prevent the use of our abundant gas reserves to bring billions of dollars of revenue back to the United States. It is difficult to envision how such a policy could be in the public interest of the United States. APGA does not provide a suggested answer to the question

⁴⁵ *Evaluating the Prospects for Increased Exports of Liquefied Natural Gas from the United States*, Brookings Institution (January 2012) (“Brookings Institute Report”).

⁴⁶ APGA, p. 14.

⁴⁷ Jack Kaskey, *U.S. Gas Export Limit of 10% Would be ‘Smart,’ Dow CEO Says*, Bloomberg News (April 26, 2012), available at <http://mobile.bloomberg.com/news/2012-04-26/u-s-gas-export-limit-of-10-would-be-smart-dow-ceo-says.html>.

⁴⁸ APGA, pgs. 16-17; MIT Energy Initiative, *The Future of Natural Gas*, at 14 (2011).

presumably because there is none.

Unfortunately, APGA has mischaracterized the finding of the EIA Export Report when APGA incorrectly states the “EIA Export Report concludes that exporting domestic LNG will *significantly increase* domestic natural gas prices.” (Emphasis added).⁴⁹ The EIA Export Report does not conclude that Gulf Coast LNG exports will “significantly” increase domestic natural gas prices.⁵⁰ Furthermore, in the preface to the report, the EIA report specifically states the following: “The projections in this report are not statements of what *will* happen but of what *might* happen, given the assumption and methodologies used.”⁵¹ This is consistent with the task assigned to EIA by DOE/FE which was limited in scope, restricted in allowed variable, confined to a selected methodology, and certainly not holistic.⁵² (As the Brookings Institute Report does note, analysis by other entities such as ICF and Advanced Resources International, have estimated shale gas recoverable reserves at levels significantly higher than EIA.⁵³) That is not to suggest the EIA was less than competent, but rather that as the EIA specifically stated the results of their analysis are only what might occur based on the limited, selected assumptions and the methodological constraints. These factors are precisely why DOE/FE has made it clear that the EIA Export Report is only one input for a more comprehensive study soon to be released. In addition numerous factors were specifically not considered, including the impact of future regulatory developments or future global impacts on United States economy. Furthermore, as EIA indicates, its results are limited by the models that it uses which are domestic based models

⁴⁹ APGA, *supra*, p. 3.

⁵⁰ EIA Export Report.

⁵¹ EIA Export Report, p. ii..

⁵² EIA Report, p. 1.

⁵³ Brookings Institute Report, p. 5.

which do not model global markets. Even the four export scenarios selected and the rate and timing of exports are unrealistic and do not reflect the real world conditions. The extended length of time for regulatory approvals, financing and construction will all conspire to extend the time between DOE/FE authorization of export applications and the eventual commencement of export pursuant authorization. Protracted phasing of exports over a several year horizon is certainly the most likely outcome. Furthermore a host of other very significant public interest considerations were ignored in the EIA Export Report including, but not limited to, job creation, increases in tax revenue to help balance governmental budgets and support a host of important governmental functions such as education, police, fire department, parks, environmental enforcement, etc. The EIA Export Report also does not consider the highly favorable contributions that LNG exports will have on the United States balance of payment deficit nor the national security value LNG exports will have as they reduce our allies future dependence on LNG exports from countries unfriendly to the United States. However, these omissions are understandable because they are factors beyond the narrow scope of the task assigned to EIA.

V.

APGA'S POLICY OBJECTIONS ARE WITHOUT MERIT

In its protest, APGA presents a shot gun and unsupportable litany of alleged adverse results if the United States permits the export of LNG.⁵⁴ These are neither persuasive nor credible. First, it should be noted that the policy and law of the United States does in fact support the export of LNG. The provisions of section 3(c) and 3(a) of NGA are but two examples. (See discussion above.) In addition, the 1984 Policy Guidelines of the DOE establish a policy of minimizing federal involvement and control in energy markets and energy resources

⁵⁴ APGA, supra pgs., 3-4.

in favor of a freely operating energy market.

Secondly, exporting LNG will in no way jeopardize the use of natural gas as a “bridge fuel.” Supplies of natural gas are abundant for the long term and undoubtedly more reserves will be developed provided the market is not hindered by misdirected policies that reduce incentives for natural gas production, such as inappropriate limits to LNG exports. Furthermore, the transition of older coal fired power plant to coal plants with carbon capture and sequestration or low GHG emission equipment or to natural gas fired alternative plants will not be determined by whether LNG is exported by Gulf Coast. Those changes are driven by a developing host of environmental regulations and the inherent inefficiencies in older coal powered plants.

In its protest, APGA argues that “(I)nflated natural gas prices will also inhibit efforts to foster natural gas as a transportation fuel....”⁵⁵ First, the term “inflated” has no relevance to the discussion of the issues before the DOE/FE. In fact, as noted, current prices appear to be too low to be sustainable. Furthermore, surely APGA would not actually favor a conversion of our transportation systems to natural gas any more than a wholesale conversion of coal plants to natural gas, since both would undoubtedly expand the market for natural gas in the United States and create upward pressure on prices, something APGA apparently vigorously opposes.

VI.

GULF COAST’S APPLICATION

FOR LNG LONG-TERM EXPORTS SHOULD BE APPROVED

A. The Gulf Coast Request for Authority to Export LNG to Free Trade Agreement Countries Should be Approved Expeditiously and Without Modification.

As discussed above, applications to export LNG to countries with which the United

⁵⁵ APGA, supra p. 3.

States has a Free Trade Agreement covering natural gas are to be handled under Section 3(c) of the NGA. The law is clear on this matter. It expressly requires that such exports are to be deemed consistent with the public interest. It further requires that such requests to export be granted without modification or delay. This requirement has been confirmed countless times.⁵⁶ In its Protest, APGA even acknowledges that this is the law.⁵⁷ On June 4, 2012 DOE/FE published the notice of Gulf Coast's application in the Federal Register. In that notice it officially confirmed that the application was complete. The law requires that the request of Gulf Coast for authority to export 2.8 Bcf/d of domestic LNG for 25 years to FTA countries must be granted without modification or further delay.⁵⁸

B. The Gulf Coast Request for Authority to Export LNG to non-Free Trade Countries Should be Approved in the Full Volumes Requested or Alternatively at Such Lesser Volumes as DOE May Determine are in the Public Interest.

The NGA establishes a rebuttal presumption that the application of Gulf Coast is in the public interest. The Gulf Coast application also demonstrated numerous benefits will flow to the United States, including but not limited to, stimulating further natural gas exploration and production by establishing a more robust, diversifying and creating a healthier natural gas market in the United States, increasing employment and investment in the United States, stimulating the economy, increasing tax revenues to all levels of government, and significantly reducing the balance of payment deficit of the United States.

⁵⁶ See, DOE/FE Order in Dkt. Nos. 10-85-LNG, 10-160-LNG, 11-160-LNG, 11-59-LNG, 11-71-LNG, 11-115-LNG, 11-127-LNG, 11-145-LNG, 12-06-LNG, 12-47-LNG, 12-48-LNG, 12-50-LNG, 12-54-LNG, and 12-61-LNG.

⁵⁷ APGA, *supra* p. 5.

⁵⁸ See, DOE/FE Order No. 2833, issued August 11, 2012 in Sabine Pass, FE Dkt. No. 10-85-LNG.

VII.

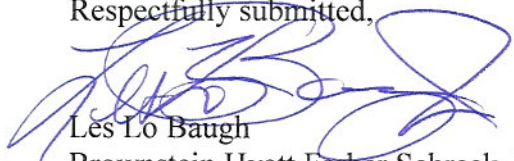
SUMMARY

As APGA correctly noted in reference to Gulf Coast's request to export LNG to FTA countries, that the law unequivocally requires DOE/FE find the requested export to be in the public interest and that DOE/FE must approve that export request without delay or modification.

Concerning Gulf Coast's request to export domestic LNG to non-FTA countries, section 3(a) of NGA establishes a rebuttal presumption that the requested export is in the public interest. The Gulf Coast application provided additional affirmative evidence that the export will be in the public interest. In its motion and protest, APGA presented various arguments in opposition to the exportation of LNG. It also advocated that DOE/FE adopt a policy to intrude inappropriately in the free market, "pick winners and losers," assign priorities for natural gas usage and act arbitrarily to artificially keep natural gas prices below sustainable levels even though current prices are at levels that do not cover the cost of replacement. Nevertheless, the record is clear. The record strongly supports the legal presumption that the Gulf Coast proposal is consistent with the public interest. In fact, these exports will assist our economic recovery resulting in increased employment and new job creation, improve the balance of trade of the United States, assist the United States in important foreign policy objectives, stimulate the economy, raise badly needed tax revenues for the federal, state and local governments, and encourage additional natural gas development. There is no credible evidence, and no rational basis, consistent with NGA and the procedures of DOE/FE, to find that the Gulf Coast's application is inconsistent with the public interest. APGA has not demonstrated that the requested Gulf Coast export is inconsistent with the public interest. APGA has failed to carry its burden of proof.

According, for these reasons and the reasons stated above in the body of this Response, Gulf Coast's requests to export LNG to FTA countries and its request to export LNG to non-FTA countries should be promptly approved by the DOE/FE.

Respectfully submitted,



Les Lo Baugh
Brownstein Hyatt Farber Schreck, LLP
Attorneys for
Gulf Coast LNG Exports, LLC

August 17, 2012

In the Matter of:)
GULF COAST LNG EXPORT, LLC)
)
)

Docket No. 12-05 LNG

VERIFICATION

County of Los Angeles

State of California

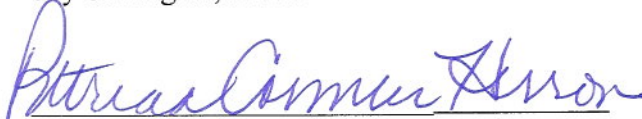
Pursuant to C.F.R. § 590.103(b), Leslie E. Lo Baugh, Jr., being duly sworn, affirms that he is authorized to execute this verification, that he has read the foregoing document, and that all facts stated herein are true and correct to the best of his knowledge, information and belief.

Dated at Los Angeles, California, this 17th day of August, 2012.



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Sworn to and subscribed before me, a Notary Public, in and for the State of California, this 17th day of August, 2012.



Patricia Cormier Herron, Notary Public



In the Matter of:
GULF COAST LNG EXPORT, LLC

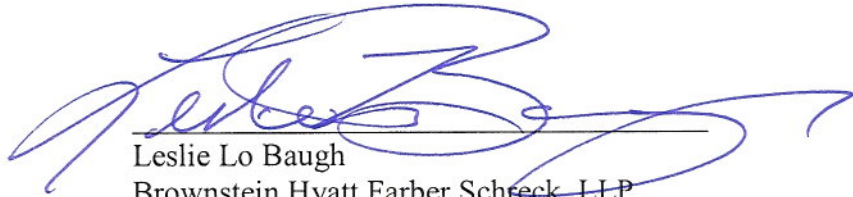
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Docket No. 12-05 LNG

CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE

Pursuant to C.F.R. § 590.103(b), I, Leslie Lo Baugh, hereby certify that I am a duly authorized representative of Gulf Coast LNG Export, LLC; and that I am authorized to sign and file with the Department of Energy, Office of Fossil Energy, on behalf of Gulf Coast LNG Export LNG, LLC, the foregoing documents and in the above-captioned proceeding.

Dated at Los Angeles, California, this 17th day of August, 2012.

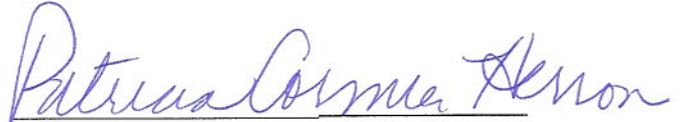


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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the movant and all other 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)(2011).

Dated at Los Angeles, California, this 17th day of August, 2012.

By: 

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 12th day of June, two thousand twelve.

PRESENT: RALPH K WINTER,
DENNY CHIN,
CHRISTOPHER F. DRONEY,
Circuit Judges.

-----x

COALITION FOR RESPONSIBLE GROWTH
AND RESOURCE CONSERVATION,
DAMASCUS CITIZENS FOR SUSTAINABILITY,
AND SIERRA CLUB,
Petitioners,

v.

12 566-ag

UNITED STATES FEDERAL ENERGY
REGULATORY COMMISSON,
Respondent,

CENTRAL NEW YORK OIL AND GAS COMPANY,
Intervenor.

-----x

FOR PETITIONERS: DEBORAH GOLDBERG (Hannah Chang,
Bridget Lee, on the brief),
EARTHJUSTICE, New York, New York,

FOR RESPONDENT: KARIN L. LARSON, Attorney (Michael A.
Bardee, General Counsel, Robert H.
Solomon, Solicitor, Holly E. Cafer,
Attorney, on the brief), United States
Federal Energy Regulatory Commission,
Washington, D.C.

FOR INTERVENOR:

ROBERT J. ALESSI (Jeffrey D. Kuhn, on the brief), DLA Piper, New York, New York (William F. Demarest, Jr., Michael A. Gatje, Husch Blackwell LLP, on the brief), Washington, DC.

Petition for review of two orders of the United States Federal Energy Regulatory Commission ("FERC").

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the petition is DENIED.

We assume the parties' familiarity with the facts and procedural history, which we reference only as necessary to explain our decision to deny the petition.

Petitioners Coalition for Responsible Growth and Resource Conservation, Damascus Citizens for Sustainability, and Sierra Club (collectively, the "Coalition") seek review of: (1) a Certificate of Public Convenience and Necessity (the "Certificate Order") granted by FERC pursuant to Section 7(c) of the Natural Gas Act, 15 U.S.C. § 717f(c), to the Central New York Oil and Gas Company ("Central NY Oil") and (2) an order denying the Coalition's Request for Rehearing of the Certificate Order (the "Rehearing Order").

The Certificate Order authorizes Central NY Oil to build and operate the MARC I Hub Line Project natural gas pipeline -- 39 miles long and 30 inches in diameter -- to run through Bradford, Sullivan, and Lycoming Counties, Pennsylvania, and to build and operate related facilities.

Under the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4347, a federal agency proposing a "major Federal action[] significantly affecting the quality of the human

environment" must prepare a detailed statement about the environmental impact of the proposed action -- an environmental impact statement ("EIS"). 42 U.S.C. § 4332(2)(C)(i); Nat'l Audubon Soc'y v. Hoffman, 132 F.3d 7, 12 (2d Cir. 1997). If an agency is uncertain as to whether the action requires an EIS, it must prepare an environmental assessment ("EA") that ["b]riefly provide[s] sufficient evidence and analysis for determining whether to prepare an [EIS]." 40 C.F.R. §§ 1501.3, 1508.9(a)(1). If the agency finds that an EIS is not necessary, the agency will issue a finding of no significant impact ("FONSI"). 40 C.F.R. § 1508.9(a)(1).

In reviewing a decision whether to issue an EIS, this Court must consider: (1) "whether the agency took a 'hard look' at the possible effects of the proposed action" and (2) if the agency has taken a "hard look," whether "the agency's decision was arbitrary or capricious." Nat'l Audubon Soc'y, 132 F.3d at 14; see also 5 U.S.C. § 706(2)(A) (court may set aside an agency's decision not to require an EIS only upon a showing that it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law"). Under NEPA, this Court's role is to "insure that the agency considered the environmental consequences" of the federal action at issue. Town of Orangetown v. Gorsuch, 718 F.2d 29, 35 (2d Cir. 1983) (citation omitted); see also Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 351 (1989) ("NEPA merely prohibits uninformed -- rather than unwise -- agency action").

Here, in considering Central NY Oil's application, FERC prepared an EA, issued a FONSI, and concluded that an EIS was not required. We conclude, based on our review of the administrative

record, that FERC took a "hard look" at the possible effects of the Project and that its decision that an EIS was not required was not arbitrary or capricious. Its 296-page EA thoroughly considered the issues. The Certificate Order carefully reviewed the concerns raised by the comments. The Rehearing Order addressed petitioners' concerns and further explained FERC's basis for issuing the FONSI.

The Coalition argues that FERC's cumulative impact analysis was inadequate. We disagree. FERC's analysis of the development of the Marcellus Shale natural gas reserves was sufficient. FERC included a short discussion of Marcellus Shale development in the EA, and FERC reasonably concluded that the impacts of that development are not sufficiently causally-related to the project to warrant a more in-depth analysis. In addition, FERC's discussion of the incremental effects of the project on forests and migratory birds was sufficient. FERC addressed both issues in the EA and has required Central NY Oil to take concrete steps to address environmental concerns raised by petitioners and others. For example, in the Certificate Order, FERC required Central NY Oil to comply with its Riparian Forested Buffer Enhancement Plan to address forest fragmentation. In Environmental Condition 17 of the EA, FERC required Central NY Oil to prepare and execute a Migratory Bird Impact Assessment and Habitat Restoration Plan. The environmental concerns identified by commenting parties, including the Environmental Protection Agency, were considered and addressed by FERC in the EA and the Rehearing Order.

Accordingly, we hold that FERC properly discharged its responsibilities under NEPA. We have considered all of petitioners' remaining arguments and conclude that they are without merit. The petition for review is DENIED.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk