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

In the matter of:

Freeport-McMoRan Energy LLC

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)

Docket No. 13-26-LNG

**MOTION TO INTERVENE OUT-OF-TIME OF
THE AMERICAN PETROLEUM INSTITUTE**

Pursuant to 10 C.F.R. 590.303, the American Petroleum Institute (“API”) files this motion to intervene out-of-time in the above-captioned docket. In support, API states as follows.

I. COMMUNICATIONS

Any communications regarding this pleading should be addressed to:

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II. BACKGROUND

API is a national trade association representing more than 500 member companies involved in all aspects of the oil and natural gas industry in the United States. Our members include owners and operators of liquefied natural gas (“LNG”) import and export facilities in the United States and around the world, as well as owners and operators of LNG vessels, global LNG traders, and manufacturers of essential technology and equipment used all along the LNG value chain. Our members also have extensive experience with the drilling and completion techniques used in shale gas development and in producing America’s natural gas resources in a safe and environmentally responsible manner.

On February 22, 2013, Freeport-McMoRan Energy, LLC (“FME”) filed an application with the Department of Energy’s Office of Fossil Energy (“DOE/FE”) seeking a long-term multi-contract authorization to export domestically produced LNG up to the equivalent of 1,176 billion cubic feet of natural gas per year to Free Trade Agreement (“FTA”) countries and non-FTA countries. The authorization sought is for a 30-year period, commencing on the earlier of the date of first export or ten years from the date the authorization is issued. FME proposes to export LNG from the Main Pass Energy Hub Deepwater Port (“MPEH”), located 16 miles offshore of Louisiana to any country that has, or in the future will have, the capacity to import LNG via ocean-going carrier, with which the United States has, or in the future enters into, an FTA requiring national treatment for trade in natural gas. FME also proposes to export LNG from MPEH to any country that does have, or in the future will have, the capacity to import LNG via ocean-going carrier, with which the United States does not have an FTA requiring national treatment for trade in natural gas. The deadline to intervene in the above-captioned proceeding was August 5, 2013.¹

III. INTERVENTION OUT-OF-TIME

DOE/FE’s regulations set forth that a motion to intervene out-of-time may be granted “for good cause shown and after considering the impact of granting the late motion of the proceeding.”² To date, there are few examples of late interventions in proceedings before DOE/FE to draw upon. However, there are a variety of examples of late interventions in proceedings before the Federal Energy Regulatory Commission (“FERC”), which, like DOE, derives its jurisdiction over certain activities related to LNG exports from Section 3 of the Natural Gas Act. In fact, FERC has a strong history of regularly granting late interventions

¹ 78 Fed. Reg. 34,084.

² 10 C.F.R. § 590.303(d).

submitted out-of-time where the party can demonstrate that its late intervention will have no adverse impact on the proceeding.³ As set forth in greater detail below, API respectfully submits that its motion to intervene out-of-time should be granted for good cause shown and that granting its motion will not have an adverse impact on this proceeding.

A. Good Cause Shown

API desires to prospectively protect its members' interests in light of DOE/FE's very recent demonstration of its commitment to refresh its public interest analysis based on the most recently available information. On August 7, 2013, two days after the intervention date in this proceeding, DOE/FE issued Order No. 3324, conditionally granting long-term multi-contract authorization to export LNG by vessel from the Lake Charles Terminal to non-FTA nations ("Lake Charles Order"). In the Lake Charles Order, DOE/FE updated its public interest analysis from the analysis provided in its May 17, 2013 Order No. 3282, conditionally granting long-term authority to export LNG by vessel from the Freeport LNG Terminal to non-FTA nations ("Freeport Order"), to include the Energy Information Administration's ("EIA") Annual Energy Outlook 2013 ("AEO 2013") projections. DOE/FE had indicated in very general terms in the Freeport Order that it would update its analysis based on new information⁴ and stated in the press release following its issuance of the Freeport Order that "[a]s further information becomes available at the end of 2013, including the EIA's Annual Energy Outlook Report, the Department will assess the impact of any market developments on subsequent public interest

³ See, e.g., *Cheniere Creole Trail Pipeline, LP*, 142 FERC ¶ 61,137 at P 23 (2013); *Sabine Pass Liquefaction, LLC*, 139 FERC ¶ 61,039 at PP 14-15 (2012); and *Cameron LNG, LLC*, 118 FERC ¶ 61,019 at PP 21-22 (2007).

⁴ For example, DOE/FE stated, "In recognition of these factors, DOE/FE intends to monitor developments that could tend to undermine the public interest in grants of successive applications for exports of domestically produced LNG and, as previously stated, attach terms and conditions to the authorization in this proceeding and to succeeding LNG export authorizations as are necessary for protection of the public interest." *Freeport LNG Expansion, L.P. and FLNG Liquefaction*, DOE/FE Order No. 3282 at 113 (May 17, 2013).

determinations.”⁵ However, it was not clear until the issuance of the Lake Charles Order on August 7, 2013, after the deadline to intervene in this proceeding had passed, how DOE/FE would pursue this course. As DOE/FE explained in the Lake Charles Order, “[w]here appropriate, this Order uses the final projections from AEO 2013, which is the most current information available at this time.”⁶ API, therefore, respectfully submits that good cause exists to grant API’s intervention only five business days out-of-time and, as demonstrated below, granting API’s motion to intervene will have no adverse impact on the above-captioned proceeding.

B. No Adverse Impact

Granting API’s late intervention will not have a negative impact on this proceeding for two reasons. First, because interventions in this proceeding were due just five business days ago, and given the large number of applications in the queue pending before DOE/FE, it seems highly likely that DOE/FE has not commenced consideration of FME’s application, and certainly is not close to an issuance of an order on the merits. Again, looking to FERC’s policy on late interventions, in granting a late intervention filed approximately 139 days after interventions were due and filed on the same day that comments on the environmental assessment were due, FERC recently explained that it “has a liberal intervention policy in applications for authorization of natural gas projects before an order on the merits has been issued.”⁷ Given that DOE/FE’s authority and FERC’s authority derive from the same organic statute, it is reasonable

⁵ Press Release, U.S. Department of Energy, Energy Department Authorizes Second Proposed Facility to Export Liquefied Natural Gas (May 17, 2013), available at <http://www.doe.gov/articles/energy-department-authorizes-second-proposed-facility-export-liquefied-natural-gas> (last visited Aug. 12, 2013).

⁶ *Lake Charles Exports, LLC*, DOE/FE Order No. 3324 at n.109, Conditionally Granting Long-Term Multi-Contract Authorization to Export LNG by Vessel from the Lake Charles Terminal to Non-Free Trade Agreement Nations (Aug. 7, 2013).

⁷ *Cheniere Creole Trail Pipeline, LP*, 142 FERC ¶ 61,137 at 23 (2013) (citing *Sabine Pass Liquefaction, LLC*, 139 FERC 61,039 at PP 14-15 (2012)).

to request DOE/FE approve API's late intervention request, particularly since it is so near in time to the established deadline.

Second, a letter from API's President and CEO, Jack Gerard, already has been entered into the above-captioned docket. The letter advocates API's position that all pending applications seeking authorization to export LNG to non-FTA nations should be approved. While this letter was sent to DOE Secretary Moniz and was not directed at a specific docket, API's general position already is part of the record in the above-captioned proceeding. For these reasons, API respectfully submits that good cause exists for granting its motion to intervene one week out-of-time because API's further participation will not have an adverse impact on the proceedings in this docket.

IV. CONCLUSION

For the reasons stated above, API respectfully requests that DOE/FE grant this motion to intervene and that API be accorded fully party status in any proceedings held by DOE/FE in this docket.

Respectfully submitted,

/s/ Benjamin Norris

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Dated: August 12, 2013

CERTIFICATE OF SERVICE

I certify that I have this 12th day of August, 2013, service copies of the foregoing document filed with the DOE/FE on the designated representatives of all of the parties to this proceeding, in accordance with 10 C.F.R. § 590.107(a).

Dated: August 12, 2013

/s/ Benjamin Norris

Benjamin Norris
Counsel for American Petroleum Institute