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U.S. Department of Energy
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**SUBJECT: In the Matter of Sabine Pass Liquefaction, LLC - FE Docket No. 13-42-LNG,
Requests for Rulemaking Regarding Natural Gas Exports**

On September 23, 2013, America’s Energy Advantage (“AEA”) and the Industrial Energy Consumer of America (“IECA”) (collectively, “Petitioners”) each filed timely motions to intervene in a proceeding before the U.S. Department of Energy’s Office of Fossil Energy (“DOE/FE”) concerning Sabine Pass Liquefaction, LLC (“SPL”) request for authorization to export liquefied natural gas (“LNG”). More specifically, in its April 2, 2013 application, SPL requests long-term, multi-contract authorization to export up to the equivalent of 88.3 billion cubic feet per year of LNG to any country with which the United States does not have a free trade agreement requiring national treatment for trade in natural gas and LNG, which has or in the future develops the capacity to import LNG via ocean-going carrier, and with which trade is not prohibited by U.S. law or policy (“non-FTA nations”).

Included with their motions to intervene, AEA and IECA filed nearly identical comments. These comments request that DOE/FE institute a rulemaking to promulgate regulations that specifically define the factors the agency will use when evaluating whether an application to export LNG is inconsistent with the public interest.¹

The American Petroleum Institute (“API”) respectfully submits this letter urging DOE/FE to not engage in the frivolous regulatory proceedings that AEA and IECA request, which are unnecessary and will serve only to delay further DOE/FE’s processing of pending LNG export applications.

¹ On April 8, 2013, the Sierra Club submitted a letter styled a “Petition for Rulemaking Regarding Natural Gas Export Policy,” which DOE properly denied in its May 17, 2013 *Freeport* Order, and which DOE has continued to deny in its August 7, 2013 *Lake Charles* Order and September 11, 2013 *Dominion Cove Point* Order. *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, DOE/FE Order No. 3282, at 106-09 (2013); *Lake Charles Exports, LLC*, DOE/FE Order No. 3324, at 118-24 (2013); and *Dominion Cove Point LNG, LP*, DOE/FE Order No. 3331, at 131-34 (2013).

I. API

API is a national trade association that represents over 500 companies involved in all aspects of the oil and natural gas industry. API's members include owners and operators of 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.

II. New Rules and Guidance are Unnecessary and Unwarranted Under Section 3 of the Natural Gas Act

Petitioners argue that the 1984 Policy Guidelines are insufficient with regard to LNG exports to the Natural Gas Act's mandate to protect the public interest. However, the 1984 Policy Guidelines and DOE's regulations governing LNG exports are intended to provide room for market forces, rather than strict regulations, to shape domestic natural gas markets, including energy production, consumption and pricing.

The U.S. Supreme Court's description of another domestic initiative intended to allow greater leniency for market forces further clarifies the importance of such policies. In discussing the Natural Gas Policy Act of 1978 ("NGPA"), the Supreme Court noted that the NGPA represented a Congressional determination "to move toward a less regulated national natural gas market" which "give[s] market forces a more significant role in determining the supply, demand, and the price of natural gas."² DOE specifically recognized and applied this principle in *Yukon Pacific*, noting the Court's finding that "the change in regulatory perspective embodied in the NGPA rested in significant part on the belief that direct federal price control exacerbated supply and demand problems by preventing the market from making long-term adjustments."³ The 1984 Policy Guidelines and DOE's current regulations promote this important policy and regulatory approach and should be preserved.

Despite the fact that the 1984 Policy Guidelines were drafted in an import context, DOE has used the concepts embodied in that document to inform its analysis of applications for authorization to export LNG to non-FTA countries. For example, in *Yukon Pacific*, the Agency explained,

[I]n evaluating exports, the DOE is mindful of the broad energy policy principles set forth in the DOE's natural gas import policy

² *Transcontinental Gas Pipe Line Corp. v. State Oil and Gas Board of Mississippi*, 474 U.S. 409, 422-24 (1986).

³ *Yukon Pacific Corp.*, DOE/FE Opinion and Order No. 350, at n.10 (Nov. 16, 1989) (citing *Transcontinental Gas Pipe Line*, 474 U.S. at 422-24).

guidelines. While those guidelines deal with imports, the principles are applicable to exports as well. The guidelines establish the policy that market forces will generally bring about results more in the public interest than will extensive regulation.⁴

Most recently, in its *Dominion Cove Point* order, DOE/FE cited the 1984 Policy Guidelines and explained, “[w]hile nominally applicable to natural gas import cases, DOE/FE subsequently held in Order No. 1473 that the same policies should be applied to natural gas export applications.”⁵ The considerations provided for in the 1984 Policy Guidelines represent a balance between domestic need and a competitive marketplace. The importance of this non-restrictive approach to assessing LNG imports and exports is underscored by statements of Senator Ron Wyden (D-OR), Chairman of the Senate Committee on Energy and Natural Resources, in a recent exchange with DOE Acting Assistant Secretary of Fossil Energy Christopher Smith. There, Senator Wyden commented on the benefits of DOE’s flexible approach over a proscriptive, algorithmic method of evaluating the public interest and recognized that an algorithmic approach would constrain DOE’s ability to sufficiently balance the necessary factors.⁶

As the wave of import applications that swept this nation in the early 2000s demonstrated, not all proposed projects ultimately will be viable for reasons unrelated to DOE regulation. This is simply one permit, and every proposed export project must secure many additional approvals before construction can commence. But beyond that, market forces and global competition will push inherently unviable projects aside. The flexibility and underlying promotion of market competition represented in DOE’s current regulations and policies play an important role in encouraging innovative technology by not acting as a regulatory bar. These regulations and policies are robust and working efficiently, and Petitioners have not cited any actual impacts or other plausible rationale for their requested regulatory reform.⁷

III. Conclusion

For the reasons above, API urges DOE to reject the Petitioners’ efforts to establish a rulemaking that would impose unnecessary regulatory obstacles and to continue on its current course of processing pending LNG export applications for approval on an expedited basis. The contrary

⁴ *Yukon Pacific Corp.*, DOE/FE Opinion and Order No. 350, at 17 (Nov. 16, 1989).

⁵ *Dominion Cove Point LNG, LLC*, DOE/FE Order No. 3331, at 8 (2013).

⁶ *Domestic Supply and Exports: Hearing Before the S. Comm. on Energy and Natural Resources*, 113th Cong. at 2:14:30 through 2:18:00 (2013) available at <http://www.energy.senate.gov/public/index.cfm/hearings-and-business-meetings?ID=0380bed7-f9ef-4450-bfa0-a3af60f7a184>.

⁷ While API does not advocate that the Agency do so, to the extent that DOE finds it necessary to alter or refine its regulations or policies concerning applications for authorization to export LNG to non-FTA countries, API urges DOE to retain the current role that market forces are allowed to play in shaping our nation’s natural gas supply and demand.

arguments are, as detailed above, without merit and should not alter the ongoing DOE process. Should you have any questions, please feel free to contact me.

Best regards,

A handwritten signature in dark ink, appearing to read 'Erik Milito', with a stylized flourish at the end.

Erik Milito

Group Director, Upstream and
Industry Operations