

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

In the Matter of)
) **FE Docket No. 13-160-LNG**
Texas LNG LLC)

**CONSOLIDATED ANSWER OF TEXAS LNG, LLC
IN OPPOSITION TO THE AMERICAN PUBLIC GAS ASSOCIATION AND
THE INDUSTRIAL ENERGY CONSUMERS OF AMERICA
MOTIONS TO INTERVENE, MOTIONS TO SUSPEND, PROTEST, AND COMMENTS**

Pursuant to Sections 590.302(b), 590.303(e), and 590.304(f) of the Department of Energy’s (“DOE”) regulations,¹ Texas LNG LLC (“Texas LNG”) hereby submits this consolidated Answer in opposition to the American Public Gas Association (“APGA”) Motion for Leave to Intervene, Motion to Suspend, and Protest (“APGA Filing”) and the Industrial Energy Consumers of America (“IECA”) Motion for Leave to Intervene, Motion to Suspend, and Protest (“IECA Filing”), both of which were filed on January 9, 2015, in the above-captioned proceeding.

In support of this Answer, Texas LNG states the following:

I. BACKGROUND

Texas LNG filed its application in DOE’s Office of Fossil Energy (“DOE/FE”) docket cited above on December 31, 2013, seeking long-term, multi-contract authorization to export up to the equivalent of approximately 0.275 billion cubic feet of natural gas per day (“Bcf/d”) (or approximately 100 trillion Btu per annum), which is approximately equivalent to two (2) million metric tons per annum (“MTA”) of domestically produced liquefied natural gas (“LNG”) for a 25-year period, commencing on the earlier of the date of first export or ten (10) years from the

¹ 10 C.F.R. §§ 590.302(b), 590.303(e), and 590.304(f).

date of issuance of the authorization requested therein (“Texas LNG Non-FTA Application”).² Texas LNG proposes to export LNG from a terminal it intends to construct, own, and operate in Brownsville, Texas (“Texas LNG Terminal”) to any country with which the United States does not have a free-trade agreement (“non-FTA”) 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. DOE/FE published notice of the Texas LNG Non-FTA Application in the Federal Register on November 10, 2014,³ establishing that the comment period would close on January 9, 2015.⁴ APGA and IECA each have requested to intervene in this proceeding.

II. APGA AND IECA’S MOTIONS TO SUSPEND CONSIDERATION OF THE TEXAS LNG NON-FTA APPLICATION SHOULD BE REJECTED

APGA and IECA request that DOE/FE suspend its consideration of the Texas LNG Non-FTA Application. However, as set forth below, DOE/FE’s own regulations, policies, and precedent require that these motions be rejected.

In nearly identical arguments, APGA and IECA assert that because one of the proposed LNG export projects has requested that DOE/FE and the Federal Energy Regulatory Commission (“FERC”) suspend processing of its application until April 1, 2015,⁵ all pending LNG export applications are *de facto* uneconomic and consideration of such applications should be suspended.⁶ However, dating back to its 1984 Policy Guidelines,⁷ DOE has espoused a policy of government nonintervention in deciding which natural gas import or export projects

² *Texas LNG, LLC*, Application for Long-Term Authorization to Export Liquefied Natural Gas, DOE/FE Docket No. 13-160-LNG (Dec. 31, 2013).

³ 79 Fed. Reg. 66,708 (Nov. 10, 2014).

⁴ *Id.*

⁵ *Excelsior Liquefaction Solutions I, LLC*, Letter Granting Request to Place Proceeding in Abeyance, DOE/FE Docket No. 12-146-LNG (Jan. 7, 2015).

⁶ APGA Filing at 4; IECA Filing at 4-5.

⁷ New Policy Guidelines and Delegation Orders Relating to the Regulation of Imported Natural Gas, 49 Fed. Reg. 6,684 (Feb. 22, 1984).

commercially advance.⁸ DOE/FE has reiterated this approach in each conditional non-FTA order to date.⁹ In contrast to the movants' unsupported assertions, Bentek Energy recently was quoted for its estimate that U.S. LNG export projects will maintain their competitive position in the global market for years to come.¹⁰ Texas LNG respectfully maintains that DOE/FE should continue its consistent policy of allowing market forces to dictate which LNG export projects will be constructed and should reject APGA and IECA's arguments.

In addition, suggesting that DOE and stakeholder resources might be better spent if non-FTA applications are processed nearer to the completion of the National Environmental Policy Act ("NEPA") process, APGA and IECA further argue that DOE/FE should delay all processing activities on a "going-forward basis"¹¹ until FERC's NEPA review is "substantially complete."¹² DOE/FE already has disposed of this line of argument. In June 2014, DOE published proposed changes to its review procedures for non-FTA applications and solicited comments.¹³ APGA submitted comments asserting, as it has here, that the appropriate time for interested stakeholders to intervene and comment is after the completion of the NEPA review.¹⁴ In its publication of the

⁸ See generally New Policy Guidelines and Delegation Orders Relating to the Regulation of Imported Natural Gas, 49 Fed. Reg. 6,684 (Feb. 22, 1984).

⁹ Quoting the 1984 Policy Guidelines, DOE/FE repeatedly has stated that "[t]he federal government's primary responsibility in authorizing imports [or exports] will be to evaluate the need for the gas and whether the import [or export] arrangement will provide the gas on a competitively priced basis for the duration of the contract while minimizing regulatory impediments to a freely operating market." See *LNG Development Co., LLC*, DOE/FE Order No. 3465 at 7 (2014) [hereinafter Oregon LNG Conditional Order]; *Jordan Cove Energy Project, LP*, DOE/FE Order No. 3413, at 7 (2014) [hereinafter Jordan Cove Conditional Order]; *Cameron LNG, LLC*, DOE/FE Order No. 3391, at 7 (2014) [hereinafter Cameron Conditional Order]; *Freeport LNG Expansion, LP et al.*, DOE/FE Order No. 3357, at 8 (2013) [hereinafter Freeport II Conditional Order]; *Dominion Cove Point LNG, LP*, DOE/FE Order No. 3331, at 8 (2013) [hereinafter DCP Conditional Order]; *Lake Charles Exports, LLC*, DOE/FE Order No. 3324, at 7 (2013) [hereinafter Lake Charles Conditional Order]; and *Freeport LNG Expansion, LP and FLNG Liquefaction, LLC*, DOE/FE Order No. 3282, at 7 (2013) [hereinafter Freeport I Conditional Order].

¹⁰ Ross Wyeno, *US LNG Projects to Remain Competitive in Low Oil-Price Environment*, PLATTS LNG DAILY, Jan. 13, 2015, at 4 (citing an analysis by Bentek which concludes that LNG "[b]uyers should continue to draw on US supplies unless oil prices remain below \$50/b[arrel] for an extended period").

¹¹ APGA Filing at 3; IECA Filing at 4.

¹² APGA Filing at 5; IECA Filing at 5.

¹³ Proposed Procedures for Liquefied Natural Gas Export Decisions, 79 Fed. Reg. 32,261 (June 4, 2014).

¹⁴ Comments of the Am. Pub. Gas Ass'n (July 21, 2014), available at <https://app.fossil.energy.gov/app/GPC-Public/Forms/ViewForm.aspx> (last visited Jan 16, 2015). IECA also submitted comments on DOE/FE's revised

final revised non-FTA procedures, DOE/FE rejected this argument, stating, “DOE will begin the process of evaluating whether an application is in the public interest prior to the completion of the NEPA review.”¹⁵ DOE/FE should reject APGA and IECA’s proposed approach in this proceeding as well.

For the foregoing reasons, the Motions to Suspend Consideration of the Application in the APGA Filing and the IECA Filing must be denied.

III. APGA AND IECA’S MOTIONS TO INTERVENE SHOULD BE REJECTED

APGA and IECA’s Motions to Intervene do not state an adequate basis for intervention and therefore should be denied. Neither movant has demonstrated a factual or legal basis for its intervention as required under DOE/FE’s regulations,¹⁶ nor has either demonstrated an interest in the proceeding beyond that of a member of the general public.¹⁷ Instead, each’s collective comments amount to little more than a recitation of arguments that DOE/FE has considered and rejected in previous non-FTA LNG export proceedings.¹⁸ Therefore, Texas LNG respectfully requests that DOE/FE reject the Motions to Intervene in APGA and IECA’s Filings, respectively.

IV. CONSOLIDATED ANSWER TO APGA AND IECA’S PROTESTS

In the event DOE/FE grants one or both of the Motions to Intervene, Texas LNG provides the following Answer to APGA and IECA’s protests in this proceeding.

procedures, but argued that the Natural Gas Act requires that the “public interest” review be completed before the NEPA review, not after. Comments of the Indus. Energy Consumers of Am. (July 21, 2014), *available at* <https://app.fossil.energy.gov/app/GPC-Public/Forms/ViewForm.aspx> (last visited (Jan. 16, 2015)). Based on the arguments of the instant Motion, IECA appears to have abandoned its previous position.

¹⁵ Procedures for Liquefied Natural Gas Export Decisions, 79 Fed. Reg. 48,132 at 48,134 (Aug. 15, 2014).

¹⁶ 10 C.F.R. § 590.303(b), (c).

¹⁷ DOE’s regulations also state that an “interested person” is a person “whose interest in a proceeding goes beyond the general interest of the public as a whole.” 10 C.F.R. § 590.102(b).

¹⁸ *See, e.g.*, Oregon LNG Conditional Order at 134-38; Jordan Cove Conditional Order at 103-04 and 107-11; Cameron Conditional Order at 92 and 95-100; DCP Conditional Order at 101-03, 125-27, and 131-34; and Lake Charles Conditional Order at 87-96.

Section 3 of the Natural Gas Act (“NGA”) establishes a rebuttable presumption in favor of natural gas exports.¹⁹ Under the plain language of Section 3, the burden of overcoming this presumption is on the opponents of non-FTA LNG export applications. APGA and IECA’s arguments make only loose connections to the Texas LNG Non-FTA Application and fail to provide the quantifiable information that DOE/FE has expected of an opponent to substantiate broad claims.²⁰ Both protests fail to make clear connections between their economic concerns and Texas LNG’s proposed export activities. Instead, APGA and IECA only discuss the impacts of LNG exports generally and in the aggregate.²¹ Indeed, the vast majority of APGA and IECA’s protests merely recapitulate views submitted in other proceedings and neither references the Texas LNG Non-FTA Application nor provides data to support its claims. DOE/FE previously has addressed the assertions that APGA and IECA raise and has found them unconvincing.²² As demonstrated below, APGA and IECA’s protests have not overcome the rebuttable presumption that the LNG exports will be in the public interest and therefore must be rejected.

A. APGA’s Protest Must Be Rejected because it Fails to Overcome the Presumption that Texas LNG’s Exports Will Be in the Public Interest.

APGA’s protest relies on a number of flawed arguments, including its mistaken suggestion that *DOE/FE* is obligated to overcome APGA’s arguments in this and other proceedings before DOE/FE grants a non-FTA LNG export application.²³ This argument demonstrates a fundamental misunderstanding of the public interest standard under the NGA.

¹⁹ 15 U.S.C. § 717b(a). Section 3 of the Natural Gas Act states that DOE/FE “shall issue such order upon application, unless... it finds that the proposed exportation or importation will not be consistent with the public interest.” *Id.* DOE/FE has stated on numerous occasions its view that the language of Section 3 of the NGA creates a rebuttable presumption that natural gas exports will be in the public interest. *See, e.g.*, Oregon LNG Conditional Order at 6; Jordan Cove Conditional Order at 6; Cameron Conditional Order at 6; DCP Conditional Order at 7; and Lake Charles Conditional Order at 6-7.

²⁰ *See, e.g.*, Jordan Cove Conditional Order at 103; Cameron Conditional Order at 92; DCP Conditional Order at 101-02; and Lake Charles Conditional Order at 87.

²¹ APGA Filing at 9; IECA at 6-10.

²² *See, e.g.*, Jordan Cove Conditional Order at 103; Cameron Conditional Order at 92; DCP Conditional Order at 101-02; and Lake Charles Conditional Order at 87.

²³ APGA Filing at 21.

As stated above, the burden of proof established in the NGA is on the opponent, here, APGA, not the applicant and not the agency. APGA's argument should be rejected.

Next, APGA argues that DOE/FE will base its public interest analysis on outdated data. In the first conditional authorization after the reply comment period on the 2012 LNG Export Study, DOE acknowledged and rejected this argument,²⁴ noting “[a]s the Supreme Court has observed, if an agency were required to rehear new evidence before it issues a final administrative decision, ‘there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening.’”²⁵ DOE/FE has restated its position in every conditional and final non-FTA authorization issued to date.²⁶ Moreover, DOE/FE has noted its intent to update its analysis of non-FTA LNG export applications to include the then-most recent data from the Energy Information Administration (“EIA”) as that data becomes available, and it has done so.²⁷ Further, as APGA itself acknowledges, DOE/FE commissioned EIA in 2014 to update its microeconomic study that formed a part of the 2012 LNG Export Study.²⁸ Importantly, as it has systematically updated the data it uses, DOE/FE consistently has found that the conclusions of the 2012 LNG Export Study remain valid and that the United States stands to gain net economic benefits from allowing LNG exports across all scenarios. APGA's assertions are misplaced and should be rejected.

²⁴ See, e.g., Freeport I Conditional Order at 60-62.

²⁵ See *id.* at 61.

²⁶ See, e.g., Oregon LNG Conditional Order at 84; Jordan Cove Conditional Order at 88; Cameron Conditional Order at 77; Freeport II Conditional Order at 97; DCP Conditional Order at 87; and Lake Charles Conditional Order at 73.

²⁷ For example, in its most recent authorization, DOE/FE updated its earlier analysis of Cameron LNG's non-FTA application in its final authorization to reflect the release of EIA's Annual Energy Outlook 2014. *Cameron LNG, LLC*, DOE/FE Order No. 3391-A, at 83-84 (2014).

²⁸ Memorandum from Christopher Smith, Principal Deputy Assistant Secretary, Office of Fossil Energy, to Adam Sieminski, Administrator, Energy Information Administration (May 29, 2014), available at <http://energy.gov/sites/prod/files/2014/05/f16/Request%20for%20Updated%20EIA%20Study.pdf>.

Third, APGA fails to offer any evidence to support its repeatedly rejected assertion that permitting LNG exports would disproportionately harm economically vulnerable households. DOE/FE has examined the net economic impacts on the economy as a whole and has found that LNG exports will have a net positive economic benefit on the U.S. economy.²⁹ In fact, in response to this argument in previous proceedings DOE/FE consistently has noted,

While there may be circumstances in which the distributional consequences of an authorizing decision could be shown to be so negative as to outweigh net positive benefits to the U.S. economy as a whole, we do not see sufficiently compelling evidence that those circumstances are present here.³⁰

APGA does not offer any new evidence to support its claim in this proceeding and DOE/FE therefore should reject APGA's argument.

APGA next argues that denying LNG exports to non-FTA LNG nations will encourage investment in U.S. manufacturing sectors, but this contention misses two critical issues. First, DOE/FE has repeatedly stated its preference for allowing market forces to determine which projects go forward.³¹ Second, even if DOE/FE were to reverse its market-based policy, APGA has offered no basis for DOE to advantage domestic manufacturing over natural gas exporters. APGA suggests generally that the United States could see a "manufacturing renaissance," but does not offer any data to substantiate this assertion.³² DOE/FE has rejected this argument in the past³³ and should reject it again in this proceeding.

Finally, APGA argues that approval of the Texas LNG Non-FTA Application will slow the adoption of natural gas for baseload electrical generation and keep the United States

²⁹ Freeport I Conditional Order at 75. DOE/FE has subsequently reiterated its position.

³⁰ See Oregon LNG Conditional Order at 99; Jordan Cove Conditional Order at 103; Cameron Conditional Order at 92; Freeport II Conditional Order at 111; DCP Conditional Order at 101; Lake Charles Conditional Order at 87; Freeport I Conditional Order at 75.

³¹ See *supra* n. 9.

³² APGA Filing at 14-15.

³³ Jordan Cove Conditional Order at 100.

dependent of foreign sources of oil for transportation fuel.³⁴ These arguments ignore EIA's 2014 natural gas production projections outpacing anticipated growth in total domestic natural gas consumption.³⁵ In addition, approval of the Texas LNG Non-FTA Application and eventual construction of the Texas LNG Terminal, along with associated infrastructure, will buttress the emerging natural gas transportation market by supporting investment in infrastructure throughout South Texas. APGA's arguments should be rejected.

B. IECA's Protest Must Be Rejected because it Fails to Overcome the Presumption that Texas LNG's Exports Will Be in the Public Interest.

IECA submits that DOE/FE has not adequately defined the public interest standard used to evaluate non-FTA natural gas export applications.³⁶ This argument ignores thirty years of agency practice of applying its understanding of the public interest standard. DOE/FE consistently has described the need to maintain reasonable domestic natural gas prices as paramount to its determination of whether a natural gas import or export is in the public interest.³⁷ Texas LNG respectfully requests that DOE/FE reject IECA's unfounded assertion.

IECA also asserts that current natural gas supply projections likely are inaccurate, noting the distinction between technically recoverable and economically recoverable resources, and urges DOE/FE to suspend consideration of LNG export authorizations.³⁸ DOE/FE has addressed and rejected similar arguments in other non-FTA proceedings and should reject it here.³⁹

IECA takes its argument a step further and maintains that DOE/FE prospectively should "adjust" authorized LNG exports through supplemental orders to account for potentially lower

³⁴ APGA Filing at 11.

³⁵ U.S. ENERGY INFORMATION ADMIN., ANNUAL ENERGY OUTLOOK 2014, at Table CP-5 (2014), available at [http://www.eia.gov/forecasts/aeo/pdf/0383\(2014\).pdf](http://www.eia.gov/forecasts/aeo/pdf/0383(2014).pdf) (last visited Jan. 18, 2015).

³⁶ IECA Filing at 6-7.

³⁷ See *supra* n. 9.

³⁸ IECA Filing at 13-14.

³⁹ Oregon LNG Conditional Order at 105-07; Jordan Cove Conditional Order at 107-11; Cameron Conditional Order at 96-100; Freeport II Conditional Order at 116-19; DCP Conditional Order at 106-09; Lake Charles Conditional Order at 93-95; Freeport I Conditional Order at 80-84.

natural gas production in the future.⁴⁰ Whether such a right exists and the scope of any such right in the NGA is a complex legal question that is beyond the scope of Texas LNG's Non-FTA Application and this proceeding is not the proper forum for IECA to lobby Congress to make changes to the NGA. Therefore IECA's argument must be rejected. Texas LNG reserves its right to provide a more in depth response to this assertion in the event that DOE/FE deems it appropriate for consideration.

V. CONCLUSION

For the foregoing reasons, Texas LNG respectfully requests that DOE/FE deny APGA and IECA's Motions to Intervene and to Suspend Consideration of the Texas LNG Non-FTA Application and reject their respective protests.

Respectfully submitted,



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Dated: January 26, 2015

⁴⁰ IECA Filing at 13-15.

CERTIFICATE OF SERVICE

I hereby certify that I have this 26th day of January 2015 served the foregoing document upon each person designated on the official service list complied by the Secretary in this proceeding.


Sandra E. Saftro
Counsel for Texas LNG LLC

VERIFICATION

Vivek Chandra, being first duly sworn on his oath deposes and says: that he is the Chief Executive Officer of Texas LNG LLC; that he is duly authorized to make this Verification; that he has read the foregoing application and is familiar with the contents therein; that all the statements and matters contained therein are true and correct to the best of his information, knowledge and belief; and that he is authorized to execute and file this Answer with the United States Department of Energy.



Vivek Chandra
Chief Executive Officer
Texas LNG LLC

District of Columbia

SWORN TO AND SUBSCRIBED before me on the 26 day of January, 2015.

Name: Nancy Wagner

Title: Notary Public

My Commission expires: _____
NANCY WAGNER
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires May 31, 2017

