

("U.S.") has not entered into a free trade agreement ("FTA") providing for national treatment for trade in natural gas ("non-FTA nations").³ Previously, DOE/FE had issued a conditional order granting SPL such authorization in May 2011, specifically conditioning it upon the Federal Energy Regulatory Commission's ("FERC") "satisfactory completion" of its environmental review process under the National Environmental Policy Act ("NEPA"),⁴ and "on issuance by DOE/FE of a finding of no significant impact or a record of decision pursuant to NEPA."⁵ FERC issued an Environmental Assessment ("EA") under NEPA for the Sabine Pass Liquefaction Project in December 2011,⁶ and DOE/FE—acting as a cooperating agency under NEPA⁷—issued a Finding of No Significant Impact in August 2012.⁸

II. DOE/FE's Commissioning of Its LNG Export Study to Guide Subsequent Regulatory Action

In conditionally granting SPL's requested authorization, DOE/FE acknowledged that projections regarding supply of and demand for natural gas are "subject to change," and stated that it "intend[s] to monitor those conditions in the future to ensure that the exports of LNG authorized herein and in any future authorizations of natural gas exports do not subsequently lead

³ *Sabine Pass Liquefaction, LLC, Final Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations*, DOE/FE Order No. 2961-A, FE Docket No. 10-111-LNG (Aug. 7, 2012) [hereinafter *Sabine Pass Final Non-FTA Order*].

⁴ 42 U.S.C. §§ 4321–4347 (2012).

⁵ *Sabine Pass Liquefaction, LLC, Opinion and Order Conditionally Granting Long-Term Authorization to Export Liquefied Natural Gas From Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations* 43, DOE/FE Order No. 2961, FE Docket No. 10-111-LNG (May 20, 2011) [hereinafter *Sabine Pass Conditional Non-FTA Order*]. DOE/FE had also previously granted SPL authorization to export up to 803 Bcf per year of LNG from the SPLNG Terminal for a thirty-year term to any nation with which the U.S. currently has, or in the future enters into, an FTA providing for national treatment for natural gas ("FTA nations"). *Sabine Pass Liquefaction, LLC, Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Free Trade Nations*, DOE/FE Order No. 2833, FE Docket No. 10-85-LNG (Sept. 7, 2010).

⁶ *See* 77 Fed. Reg. 277 (Jan. 4, 2012).

⁷ *See* 40 C.F.R. §§ 1501.6, 1503.2, 1506.3 (2013) (detailing rights and responsibilities of cooperating agencies, including right to adopt lead agencies' NEPA analyses).

⁸ DOE/FE, *Finding of No Significant Impact for Sabine Pass Liquefaction, LLC Regarding Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations*, *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG (Aug. 7, 2012).

to a reduction in the supply of natural gas needed to meet essential domestic needs.”⁹ To further this approach, DOE/FE commissioned a two-part study of the economic impacts of granting applications for LNG exports (“LNG Export Study”), and issued it for public comment in December 2012.¹⁰ The first part, a study by the U.S. Energy Information Administration (“EIA”), assessed how specified scenarios of increased natural gas exports could affect domestic energy markets.¹¹ The second part, a study by NERA Economic Consulting evaluated the macro-economic impact of LNG exports on the U.S. economy using a general equilibrium macroeconomic model of the U.S. economy with an emphasis on the energy sector and natural gas in particular.¹² DOE/FE announced that all timely comments received on the LNG Export Study would be “considered in the disposition of the dockets” for all pending applications for LNG export authorizations.¹³ IECA and Sierra Club submitted comments on the LNG Export Study; AEA did not.

Since issuing the LNG Export Study and reviewing comments thereon, DOE/FE has granted three additional applications for authorization to export LNG to non-FTA nations.¹⁴ In

⁹ Sabine Pass Conditional Non-FTA Order at 32.

¹⁰ See 77 Fed. Reg. 73,627, 73,628 (Dec. 11, 2012).

¹¹ *Id.* at 73,627.

¹² *Id.*; see NERA Economic Consulting, *Macroeconomic Impacts of LNG Exports from the United States* (Dec. 3, 2012) [hereinafter NERA Report], available at http://energy.gov/sites/prod/files/2013/04/f0/nera_lng_report.pdf.

¹³ DOE/FE, Procedural Order, *Freeport Expansion, L.P., and FLNG Liquefaction, LLC et al.*, FE Dockets No. 10-161-LNG et al. (Jan. 28, 2013).

¹⁴ See *Freeport LNG Expansion, L.P., and FLNG Liquefaction, LLC, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas to Non-Free Trade Agreement Nations*, DOE/FE Order No. 3282, FE Docket No. 10-161-LNG (May 17, 2013) [hereinafter Freeport Non-FTA Order]; *Lake Charles Exports, LLC, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Lake Charles Terminal to Non-Free Trade Agreement Nations*, DOE/FE Order No. 3324, FE Docket No. 11-59-LNG (Aug. 7, 2013) [hereinafter Lake Charles Non-FTA Order]; *Dominion Cove Point LNG, L.P., Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Cove Point LNG Terminal to Non-Free Trade Agreement Nations*, DOE/FE Order No. 3331, FE Docket No. 11-128-LNG (Sept. 11, 2013) [hereinafter Cove Point Non-FTA Order].

evaluating the public interest, each order addressed the LNG Export Study and public comments thereon (including those of IECA and Sierra Club),¹⁵ and committed to DOE/FE's participation as a cooperating agency in FERC's NEPA process.¹⁶

In April 2013, Sierra Club submitted a Petition for Rulemaking Regarding Natural Gas Export Policy to DOE pursuant to the Administrative Procedure Act ("APA"),¹⁷ requesting that DOE "promulgate new regulations or guidance defining the process by which it will consider applications to export liquefied natural gas."¹⁸ The Sierra Club Petition was submitted on behalf of a number of organizations, but not AEA or IECA.¹⁹

III. The Instant SPL Applications

On February 27, 2013, SPL submitted an application to DOE/FE under Section 3 of the NGA, in FE Docket No. 13-30-LNG, for authorization to export up to an additional 101 Bcf per year of LNG from the Sabine Pass Liquefaction Project to both FTA nations and non-FTA nations, for a twenty-year term, in accordance with an LNG Sale and Purchase Agreement ("SPA") between SPL and Total Gas & Power North America, Inc.²⁰ On April 2, 2013, SPL submitted an application to DOE/FE in FE Docket No. 13-42-LNG for authorization to export up to an additional 88.3 Bcf per year of LNG from the Sabine Pass Liquefaction Project to both

¹⁵ See Freeport Non-FTA Order at 30–109; Lake Charles Non-FTA Order at 42–121; Cove Point Non-FTA Order at 56–134.

¹⁶ See Freeport Non-FTA Order at 120–21; Lake Charles Non-FTA Order at 133; Cove Point Non-FTA Order at 150.

¹⁷ 5 U.S.C. § 553(e) (2012).

¹⁸ Letter from Craig Holt Segall, Sierra Club to Steven Chu, Sec'y, DOE 1 (Apr. 8, 2013) [hereinafter Sierra Club Petition], available at <http://www.sierraclub.org/pressroom/downloads/2013-03-LNG-rulemaking-petition.pdf>.

¹⁹ See *id.* at 2–3 (listing petitioning parties).

²⁰ Application of Sabine Pass Liquefaction, LLC for Long-Term Authorization to Export Liquefied Natural Gas, *Sabine Pass Liquefaction, LLC*, FE Docket No. 13-30-LNG (Feb. 27, 2013) [hereinafter SPL Total Application]; see LNG Sale and Purchase Agreement (FOB) Dated December 14, 2012, Between Sabine Pass Liquefaction, LLC (Seller) and Total Gas & Power North America, Inc. (Buyer), available at <http://www.sec.gov/Archives/edgar/data/1383650/000138365012000153/exhibit101totalspa.htm>.

FTA nations and non-FTA nations, for a twenty-year term, in accordance with an LNG SPA between SPL and Centrica plc.²¹ Together, these two SPAs account for almost the entire liquefaction capacity of Train 5, for which—together with Train 6—SPL has requested FERC authorization to construct as “Stage 3” of the Sabine Pass Liquefaction Project, also referred to as the Liquefaction Expansion Project.²² Both the SPL Total Application and the SPL Centrica Application included an appendix that addressed the public interest by discussing the projected need for the natural gas to be exported, addressing the NERA Report, and explaining how the underlying SPAs had been constructed to respect the competitive natural gas market.²³ DOE/FE granted SPL authorization to export LNG to FTA nations pursuant to the SPAs in July 2013,²⁴ and set a deadline of September 23, 2013, for protests and motions to intervene in the proceedings regarding SPL’s request for authorization to export LNG to non-FTA nations.²⁵ The AEA Filing, IECA Filing, and Sierra Club Filing were timely filed on September 23, 2013.

²¹ Application of Sabine Pass Liquefaction, LLC for Long-Term Authorization to Export Liquefied Natural Gas, *Sabine Pass Liquefaction, LLC*, FE Docket No. 13-42-LNG (Apr. 2, 2013) [hereinafter SPL Centrica Application]; see LNG Sale and Purchase Agreement (FOB) Dated March 22, 2013, Between Sabine Pass Liquefaction, LLC (Seller) and Centrica plc (Buyer), available at <http://www.sec.gov/Archives/edgar/data/1383650/000138365013000038/exhibit101centricaspa.htm>.

²² Application for Authorizations Under the Natural Gas Act, *Sabine Pass Liquefaction Expansion, LLC, et al.*, FERC Docket Nos. CP13-552-000 & CP13-553-000 (Sept. 30, 2013) [hereinafter Stage 3 FERC Application], available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13361086>.

²³ SPL Total Application, Ex. C; SPL Centrica Application, Ex. B.

²⁴ *Sabine Pass Liquefaction, LLC, Order Granting Authorization to Export Liquefied Natural Gas by Vessel Pursuant to the Long-Term Contract with Total Gas & Power North America, Inc. from the Sabine Pass LNG Terminal to Free Trade Agreement Nations*, DOE/FE Order No. 3306, FE Docket No. 13-30-LNG (July 11, 2013); *Sabine Pass Liquefaction, LLC, Order Granting Authorization to Export Liquefied Natural Gas by Vessel Pursuant to the Long-Term Contract with Centrica plc from the Sabine Pass LNG Terminal to Free Trade Agreement Nations* DOE/FE Order No. 3307, FE Docket No. 13-42-LNG (July 12, 2013).

²⁵ See 78 Fed. Reg. 44,934 (July 25, 2013); 78 Fed. Reg. 44,937 (July 25, 2013).

RESPONSES TO AEA FILING, IECA FILING, AND SIERRA CLUB FILING

I. Response to AEA Filing and IECA Filing

A. AEA and IECA Have Failed to Set Forth Any Particularized Interest in the Instant SPL Applications

DOE/FE's regulations require any person seeking to intervene in a natural gas export authorization proceeding to "set[] out clearly and concisely the facts upon which the petitioner's claim of interest is based," and to "state, to the extent known, the position taken by the movant and the factual and legal basis for such positions."²⁶ The definition of "interested person" is limited to persons "whose interest in a proceeding goes beyond the general interest of the public as a whole."²⁷ Furthermore, an intervenor's participation "shall be limited to matters affecting asserted rights and interests specifically set forth in the motion to intervene."²⁸ AEA and IECA should not be granted intervention under these standards.

The AEA Filing and IECA Filing contain comments that are all but identical (making it remarkable that each asserts that "[n]o other party to these proceedings can adequately represent [its] interests").²⁹ Nor is the AEA Filing or the IECA Filing specific to SPL's instant applications, except insofar as each mentions in passing the amount of LNG for which SPL seeks export authorization.³⁰ It is telling that neither AEA nor IECA even attempts to articulate its

²⁶ 10 C.F.R. § 590.303(b), (c) (2013).

²⁷ *Id.* § 590.102(h).

²⁸ *Id.* § 590.303(g).

²⁹ AEA Filing at 3; IECA Filing at 3. One of the very few differences between the two "Comments" sections is that "IECA's members believe that their interests and the interests of all constituencies affected by LNG exports *are not being served*" by DOE/FE's current approach, IECA Filing at 3-4 (emphasis added), whereas "AEA's members believe that their interests and the interests of all constituencies affected by LNG exports *would be better served*" by a changes to DOE/FE's current approach, AEA Filing at 4 (emphasis added). The implication is that AEA believes that DOE/FE's current approach is adequate (if imperfect). This is tantamount to a concession that AEA would not be aggrieved by further export authorizations granted pursuant to DOE/FE's current approach.

³⁰ *See* AEA Filing at 2; IECA Filing at 2.

legally-required “position” on SPL’s applications,³¹ instead asserting that they “anticipate[] that [they] will submit a more detailed summary of [their] position . . . at a later date.”³² They do not address the public interest-focused appendices to the SPL Total Application or the SPL Centrica Application. AEA and IECA have previously demonstrated no interest in the requested authorizations: for instance, while both profess concern over the “consequences” of LNG exports on “the environment,”³³ neither submitted scoping comments in response to FERC’s notice of intent to prepare an EA for the Liquefaction Expansion Project under NEPA.³⁴

Rather than having any specific bearing on the instant SPL applications, the AEA Filing and the IECA Filing assert a generalized interest in DOE/FE’s overall approach to the public interest inquiry under NGA Section 3, and a “major concern” over DOE/FE’s “continued reliance on the flawed NERA Report.”³⁵ Intervention here is unnecessary to advance that interest: AEA and IECA had two opportunities to submit comments on the NERA Report that would be included in the dockets for the instant applications —IECA did so, while AEA did not.

In sum, AEA and IECA have failed to articulate any particularized interests that warrant intervention in these proceedings, and have instead made boilerplate, generalized arguments that—as reflected by DOE/FE’s solicitation of comments on the NERA Report, and as further discussed immediately below—should be addressed in other venues, not here. Accordingly, SPL opposes a grant of intervention to AEA or IECA.

³¹ 10 C.F.R. § 590.303(c).

³² AEA Filing at 9; IECA Filing at 9.

³³ AEA Filing at 7; IECA Filing at 7.

³⁴ *See* 78 Fed. Reg. 35,625 (June 13, 2013).

³⁵ AEA Filing at 6; IECA Filing at 6.

B. Intervention in These Proceedings Is Not the Proper Forum for AEA and IECA to Assert Their Generalized Interests

1. These Proceedings Do Not Provide a Proper Forum for a Rule-Making Request

Rather than commenting on SPL’s applications, AEA and IECA broadly argue that “[t]he legal standards that DOE used to analyze the public interest in connection with [prior] orders are not adequate, appropriate, or sustainable,”³⁶ and “that a rulemaking or similar process involving public comment would be the best method through which to establish appropriate standards for reviewing LNG export applications.”³⁷ They envision that DOE/FE “will apply these standards to the evaluation and consideration of each pending and future application and to the reassessment and potential modification or rescission of existing export authorizations.”³⁸ The proper forum for such a request is not the above-captioned dockets, but rather a petition for rule-making under the APA,³⁹ such as the Sierra Club Petition.

The APA distinguishes between “rule making” and “adjudications.”⁴⁰ What AEA and IECA are asking for is clearly a “rule” under the APA’s definition of that term: “an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.”⁴¹ Interested persons have “the right to petition for the issuance, amendment, or repeal of a rule.”⁴² “Adjudication,” by contrast, is defined as “an agency process for the

³⁶ AEA Filing at 3; IECA Filing at 3.

³⁷ AEA Filing at 8; IECA Filing at 8.

³⁸ AEA Filing at 3–4; IECA Filing at 3.

³⁹ 5 U.S.C. § 553(e) (2012).

⁴⁰ *Id.* §§ 553, 554.

⁴¹ *Id.* § 551(4).

⁴² *Id.* § 553(e).

formulation of an order,” with “order” in turn being “the whole or part of a final disposition . . . of an agency in a matter other than rule making.”⁴³

The NGA characterizes DOE/FE’s review of an application for export authorization as an adjudication under the APA, directing it to “issue [an] order . . . after opportunity for hearing.”⁴⁴ Similarly, DOE/FE’s procedural rules for LNG export applications clearly contemplate an adjudicative process, allowing for trial-like procedures (such as motions, conferences of the parties, and hearings) and a process ultimately culminating in an order.⁴⁵ To be sure, an order issued by DOE/FE will have precedential effect in future adjudications of export applications. But DOE/FE’s adjudication of a given export application is not the proper forum in which to request the broad rule-making that AEA and IECA contend is necessary.

2. These Proceedings Do Not Provide a Proper Forum for a Request to Rescind Prior Export Authorizations

In addition to broad prospective rule-making, AEA and IECA also request that DOE/FE reassess and potentially modify or rescind previously-granted export authorizations.⁴⁶ These proceedings clearly are not the proper forum for asking DOE/FE to re-visit the four previously-granted non-FTA export authorizations, which are unrelated to the applications pending in the above-captioned proceedings. DOE/FE’s procedural regulations allow persons to intervene, protest against applications, and seek re-hearing of orders granting such applications.⁴⁷ But the proper forum for doing so is in the particular docket at issue, not in a wholly different proceeding, as AEA and IECA attempt to do.

⁴³ *Id.* § 551(7), (6).

⁴⁴ 15 U.S.C. § 717b(a) (2012).

⁴⁵ *See generally* 10 C.F.R. pt. 590, subpts. C, D (2013).

⁴⁶ *See* AEA Filing at 3–4, 6; IECA Filing at 3, 6.

⁴⁷ *See* 10 C.F.R. §§ 590.303, 590.304, 590.501 (2013).

C. AEA's and IECA's Substantive Arguments Are Misguided

AEA and IECA make several critiques of DOE/FE's handling of export applications, none of them persuasive.⁴⁸

First, they argue that DOE/FE may not rely on its 1984 Policy Guidelines, which presume that the normal functioning of the competitive market rather than government intervention will benefit the public,⁴⁹ because Congress intended different standards to apply to the NGA Section 3 public interest determination depending on whether importation or exportation was at issue.⁵⁰ DOE/FE has applied its Policy Guidelines to export authorizations for almost twenty-five years.⁵¹ Furthermore, AEA and IECA are mistakenly attempting to divine legislative intent from a preliminary draft of the NGA, not the statute that was ultimately enacted. Indeed, the Supreme Court has construed congressional intent underlying an enacted statute by looking to provisions that “deliberately were eliminated” between the draft and final stages,⁵² and has noted that such elimination “strongly militates against a judgment that Congress intended a result that it expressly declined to enact.”⁵³ The very case that AEA and IECA cite acknowledges that,

⁴⁸ AEA and IECA also imply that the American Petroleum Institute (“API”) objects to DOE/FE’s reliance on EIA projections. *See* AEA Filing at 6 n.12; IECA Filing at 6 n.12. In fact, nothing in API’s filing objects to such reliance. *See* Motion to Intervene Out-of-Time of the American Petroleum Institute, *Freeport-McMoRan Energy LLC*, FE Docket No. 13-26-LNG (Aug. 13, 2013). Indeed, API filed a letter in the above-captioned proceedings opposing AEA and IECA’s request for a rule-making. *See* Letter from Erik Milito, Group Director, Upstream & Industry Operations, API to DOE, FE Dockets No. 13-30-LNG & 13-42-LNG (Oct. 4, 2013). Moreover, API had previously “urge[d]” DOE “to approve all pending non-FTA LNG export applications without delay.” Letter from Jack Gerard, President & CEO, API to Hon. Ernest Moniz, Sec’y, DOE, Re: LNG Export Authorization Process (June 26, 2013), available at http://www.fossil.energy.gov/programs/gasregulation/authorizations/2013_applications/Ex_Parte07_03_13.pdf.

⁴⁹ *See* 49 Fed. Reg. 6684, 6687 (Feb. 22, 1984).

⁵⁰ *See* AEA Filing at 4–5; IECA Filing at 4–5.

⁵¹ *See Phillips Alaska Nat. Gas Corp., Order Extending Authorization to Export Liquefied Natural Gas from Alaska*, DOE/FE Order No. 1473 14, FE Docket No. 96-99-LNG (Apr. 2, 1999) (citing *Yukon Pac. Corp., Order Granting Authorization to Export Liquefied Natural Gas from Alaska*, 1 FE ¶ 70,259, 71,128, ERA Order No. 350, ERA Docket No. 87-68-LNG (1989)).

⁵² *Green v. Bock Laundry Mach. Corp.*, 490 U.S. 504, 526 (1989).

⁵³ *Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S. 186, 200 (1974).

whereas the “earlier drafts” of the NGA only gave DOE authority over exports, the enacted statute applied the public interest standard to ““proposed importation *or* exportation.””⁵⁴

Second, AEA and IECA profess concern over the environmental impacts of LNG exports, contending that DOE/FE must undertake a rulemaking to ensure that such impacts are taken into account in the public interest determination.⁵⁵ This overlooks that Congress has designated FERC as the lead agency for purposes of environmental review under NEPA of proposed LNG export facilities.⁵⁶

Finally, AEA and IECA reiterate unpersuasive criticisms of the NERA Report—not actual analyses responsive to it—that IECA has already brought to DOE/FE’s attention (and DOE/FE has already addressed),⁵⁷ and mischaracterize the NERA Report as having “conceded that rising LNG exports would harm the vast bulk of people in the United States.”⁵⁸ It is true that the NERA Report predicted that, “[a]t the same time that LNG exports create higher income in total in the U.S., they shift the composition of income so that both wage income and income from capital investment are reduced.”⁵⁹ But LNG exports would also create two additional sources of income, in the form of higher export revenues and higher natural gas income.⁶⁰ Thus,

⁵⁴ *W. Va. Pub. Servs. Comm’n v. DOE*, 681 F.2d 847, 855 (D.C. Cir. 1982) (quoting 15 U.S.C. § 717b) (emphasis added).

⁵⁵ See AEA Filing at 7; IECA Filing at 7.

⁵⁶ See 15 U.S.C. § 717n(b) (2012).

⁵⁷ See Letter from Paul N. Cicio, President, IECA to Office of Natural Gas Regulatory Activities, DOE/FE, Re: 2012 LNG Export Study—NERA—“Macroeconomic Impact of LNG Exports from the United States,” FE Docket No. 2012-29894 (Jan. 24, 2013), available at http://www.fossil.energy.gov/programs/gasregulation/authorizations/export_study/satterfield_email.pdf; Letter from Paul N. Cicio, President, IECA to Hon. Steven Chu, Sec’y, DOE, Re: LNG Export Studies (Feb. 24, 2013), available at http://www.fossil.energy.gov/programs/gasregulation/authorizations/export_study/reply_comments/Industrial_Energy_Consumers_America02_25.pdf; see also Freeport Non-FTA Order at 56–102 (addressing substantive comments on LNG Export Study submitted by IECA and others); Lake Charles Non-FTA Order at 68–114 (same); Cove Point Non-FTA Order at 82–127 (same).

⁵⁸ AEA Filing at 7; IECA Filing at 7.

⁵⁹ NERA Report at 7.

⁶⁰ See *id.*

the NERA Report concluded that “[t]he 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 natural gas prices.”⁶¹

II. Response to Sierra Club Filing

Sierra Club has repeatedly sought to intervene, comment, protest, and request reconsideration in proceedings relating to the Sabine Pass Liquefaction Project before both DOE/FE and FERC. SPL hereby refers to and incorporates by reference the numerous filings that have already been made by SPL and its fellow subsidiaries of Cheniere Energy, Inc., in response to Sierra Club in those proceedings.⁶² Sierra Club has also made filings in the dockets of several other proceedings before DOE/FE and FERC concerning other export applications, and the Sierra Club Filing here unsurprisingly consists almost entirely of generalized assertions regarding the putative effects of induced natural gas production as a consequence of LNG exports, not information specific to the instant applications. In fact, as explained in the recently-submitted Stage 3 FERC Application, the environmental impacts of the Liquefaction Expansion

⁶¹ *Id.* at 7–8.

⁶² See Answer of Sabine Pass Liquefaction, LLC in Opposition to Out-of-Time Intervention of Sierra Club, *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG (May 3, 2012); Answer of Sabine Pass Liquefaction, LLC in Opposition to Motion of Sierra Club for Stay, *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG (Sept. 21, 2012); Answer of Sabine Pass Liquefaction, LLC in Opposition to Motion to Supplement the Record, *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG (Nov. 13, 2012); Answer of Cheniere Marketing, LLC to Motions to Intervene, Protest and Comments, *Cheniere Marketing, LLC*, FE Docket No. 12-97-LNG (Jan. 10, 2013); see also Motion to Oppose Late Intervention of Sierra Club, *Sabine Pass Liquefaction, LLC, and Sabine Pass LNG, L.P.*, FERC Docket No. CP11-72-000 (Mar. 23, 2012), available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=12925559>; Answer of Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P. in Opposition to Motion for Stay, *Sabine Pass Liquefaction, LLC, and Sabine Pass LNG, L.P.*, FERC Docket No. CP11-72-000 (May 29, 2012), available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=12994824>; Answer of Cheniere Creole Trail Pipeline, L.P. in Opposition to Out-of-Time Motion to Intervene of Sierra Club and Response to Comments, *Cheniere Creole Trail Pipeline, L.P.*, FERC Docket No. CP12-351-000 (Nov. 1, 2012), available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13101228>; Answer to Out-of-Time Motion to Intervene of Sierra Club and Response to Comments, *Sabine Pass Liquefaction, LLC, and Sabine Pass LNG, L.P.*, FERC Docket No. CP13-2-000 (Feb. 19, 2013), available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13184492>; Answer of Cheniere Creole Trail Pipeline, L.P. in Opposition to Motion for Stay, *Cheniere Creole Trail Pipeline, L.P.*, FERC Docket No. CP12-351-000 (Apr. 9, 2013), available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13229191>.

Project will be minimal, because it will be located entirely within the existing SPLNG Terminal site.⁶³ SPL submits the following further responses to the Sierra Club Filing.

A. Sierra Club Should Be Denied Intervention

Sierra Club has failed to articulate a sufficient interest in the proceedings regarding SPL's instant applications to warrant intervention. Sierra Club asserts that its interests include "[t]he environmental consequences of any gas exports from the Sabine Pass expansion project, including emissions associated with the liquefaction process [and] environmental damage associated with construction and operation of the facility and associated infrastructure," because "Sierra Club members live and work throughout the areas that will be affected by Sabine Pass's export proposals."⁶⁴ But the latter assertion is not borne out by the exhibit cited in support of it, a declaration that states only that Sierra Club had 2819 members in Louisiana as of May 20, 2013.⁶⁵ Indeed, only 1 of Sierra Club's 115 exhibits has any specific relation to SPL's instant applications.⁶⁶ Furthermore, to the extent that Sierra Club is attempting to claim an interest in the siting, construction, and operation of the Liquefaction Expansion Project, those matters are within the exclusive jurisdiction of FERC.⁶⁷ It would thus be duplicative and unnecessary to allow Sierra Club to intervene on the basis of its putatively-claimed interest in the siting, construction, and operation of the Liquefaction Expansion Project; and Sierra Club would in no way be "impair[ed] or imped[ed]" in protecting that interest as a result of being denied

⁶³ Stage 3 FERC Application at 16–17.

⁶⁴ Sierra Club Filing at 2.

⁶⁵ *See id.*, Ex. 1, ¶ 7.

⁶⁶ *See id.*, Ex. 15 (reproducing draft resource report submitted to FERC by SPLNG as part of FERC NEPA pre-filing process for Liquefaction Expansion Project).

⁶⁷ *See* 15 U.S.C. § 717b(e)(1) (2012).

intervention here.⁶⁸ Indeed, Sierra Club has already submitted NEPA scoping comments to FERC, making many of the same points as in the Sierra Club Filing submitted to DOE/FE.⁶⁹

B. Sierra Club’s Protest Should Be Rejected

Sierra Club has failed to set forth any relevant studies or other evidence that granting the SPL Total Application or the SPL Centrica Application, specifically, would not be consistent with the public interest. Instead, the Sierra Club filing consists almost entirely of a repetition of arguments that Sierra Club has previously raised in opposition to other proposed export applications, arguments that have already been rejected by DOE/FE.⁷⁰

1. Sierra Club Fails to Overcome the Presumption that SPL’s Applications Are Consistent with the Public Interest

Sierra Club once again misstates the standard for evaluating export applications when it says that “Section 3 of the Natural Gas Act provides that DOE/FE cannot authorize exports unless it finds the exports to be in the public interest.”⁷¹ In fact, Section 3 of the NGA requires that DOE/FE authorize exports to a foreign country “unless” there is a finding on the public record that such exports “will not be consistent with the public interest.”⁷² Thus, Section 3

creates a statutory presumption in favor of approval of an export application, and the Department must grant the requested export extension unless it determines the presumption is overcome by evidence in the record of the proceeding that the proposed

⁶⁸ Fed. R. Civ. P. 24(a)(2).

⁶⁹ See NEPA Scoping Comments, *Sabine Pass Liquefaction Expansion et al.*, FERC Docket No. PF13-8-000 (July 10, 2013), available at <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=13302755>.

⁷⁰ See Sabine Pass Final Non-FTA Order at 9–28, 5 (denying Sierra Club’s motion to intervene out-of-time, and concluding, “based on a review of the complete record in the FERC proceeding and the arguments raised in the instant proceeding by the Sierra Club, that there is no need or sufficient justification to supplement the environmental review conducted by the FERC”); see also Cove Point Non-FTA Order at 39–44, 45–55, 135–41 (addressing Sierra Club arguments in opposition to export application).

⁷¹ Sierra Club Filing at 3.

⁷² 15 U.S.C. § 717b(a).

export will not be consistent with the public interest. Opponents of an application bear the burden of overcoming this presumption.⁷³

While Sierra Club attempts to downplay the significance of this presumption,⁷⁴ DOE/FE has previously rejected Sierra Club's attempts to rebut it by pointing to information that is not specific to a particular export application, finding this insufficient to "overcome the statutory presumption."⁷⁵ Because Sierra Club relies on the same broad arguments and non-specific assertions, DOE/FE should follow its recent precedent and deny Sierra Club's protest here, too.

2. Sierra Club's NEPA Arguments Should Be Dismissed

Much of the Sierra Club Filing is focused on issues that are not particularly germane to these proceedings, including environmental issues associated with "the construction and operation of trains 5 and 6, the pipeline extension and expansion, and any other associated infrastructure,"⁷⁶ as well as environmental issues associated with the presumption of induced shale gas production, and all presumptive direct, indirect and cumulative impacts associated with all proposed export projects. Many of these arguments are irrelevant whereas others are misplaced, because FERC—not DOE/FE—is the lead agency for purposes of conducting NEPA analyses. DOE/FE has agreed to participate as a cooperating agency in FERC's environmental review process for the Liquefaction Expansion Project, in order to satisfy its NEPA responsibilities.⁷⁷

SPL has requested that DOE/FE issue conditional orders granting export authorization, pending completion of the NEPA process for the Liquefaction Expansion Project by FERC and

⁷³ *Phillips Alaska Natural Gas Corp., Order Extending Authorization to Export Liquefied Natural Gas from Alaska*, DOE/FE Order No. 1473 13, FE Docket No. 96-99-LNG (Apr. 2, 1999) (citing *Panhandle Producers and Royalty Owners Ass'n v. Econ. Regulatory Admin.*, 822 F.2d 1105, 1111 (D.C. Cir. 1987)).

⁷⁴ See Sierra Club Filing at 7–8.

⁷⁵ Cove Point Non-FTA Order at 142.

⁷⁶ Sierra Club Filing at 4.

⁷⁷ 78 Fed. Reg. at 35,626.

subsequent issuance of a finding of no significant impact by DOE/FE.⁷⁸ Sierra Club once again takes issue with this request, asserting that DOE/FE may not issue a conditional order authorizing the export of LNG pending completion of the NEPA review process.⁷⁹ While acknowledging that DOE/FE has the authority to issue conditional orders, Sierra Club nonetheless states that agencies are prohibited from taking “any action on a proposal prior to completion of NEPA review if that action tends to ‘limit the choice of reasonable alternatives.’”⁸⁰ Sierra Club’s position is inconsistent with Section 590.402 of the DOE regulations, which provides that “[t]he Assistant Secretary may issue a conditional order *at any time* during a proceeding prior to issuance of a final opinion and order.”⁸¹ Indeed, DOE/FE recently rejected Sierra Club’s argument that conditional export authorizations are inappropriate⁸² (a conclusion that the Sierra Club Filing calls “improper”).⁸³

3. Sierra Club’s Environmental Arguments Are Substantively Flawed

Even assuming *arguendo* that Sierra Club’s environmental arguments were well taken as a procedural matter in the context of a DOE/FE proceeding regarding LNG export authorization, their substance is unsupported by facts, regulations, and precedent.

⁷⁸ SPL Total Application at 4 & n.10 (citing 10 C.F.R. § 590.402); SPL Centrica Application at 4 & n.9 (same).

⁷⁹ See Sierra Club Filing at 19–21.

⁸⁰ *Id.* at 20.

⁸¹ 10 C.F.R. § 590.402 (2013) (emphasis added); see also *id.* (“The conditional order shall include the basis for not issuing a final opinion and order at that time and a statement of findings and conclusions. The findings and conclusions shall be based solely on the official record of the proceeding.”); *Ocean State Power, Final Order Granting Authorization to Import Natural Gas from Canada*, 1 ERA ¶ 70,810, DOE/ERA Order No. 243-A, ERA Docket No. 86-62-NG (Sept. 14, 1988) (granting the first conditional authorization by predecessor agency, the Economic Regulatory Administration (“ERA”), to import natural gas from Canada, conditioned upon a final opinion and order from ERA after review by DOE of the final EIS being prepared for the Ocean State Project by FERC); *Pub. Utilities Comm’n of Cal. v. FERC*, 900 F.2d 269, 282 (D.C. Cir. 1990) (stating that an agency can make a final decision, so long as it assesses the environmental data before the decision’s effective date).

⁸² See Cove Point Non-FTA Order at 43, 139.

⁸³ Sierra Club Filing at 20.

a. There Is No Basis for a Programmatic EIS

Sierra Club is incorrect that DOE/FE must prepare a programmatic EIS to consider the direct and indirect impacts of all proposed export projects.⁸⁴ DOE’s NEPA regulations define a programmatic EIS as a “broad-scope EIS . . . that identifies and assesses the environmental impacts of a DOE program.”⁸⁵ Courts have stated that a programmatic EIS reflects the “broad environmental consequences attendant upon a wide-ranging federal program.”⁸⁶ The rationale for preparation of a programmatic EIS is that a coordinated federal program is likely to generate disparate but related impacts.⁸⁷ Numerous companies have proposed to site, construct, and operate LNG export facilities and their associated filings are pending before FERC and DOE/FE; but these projects are not part of a coordinated federal program, and individually are not part of an orchestrated series of projects directed by a single decision-maker such as the federal government. DOE/FE does not “direct the development” of LNG or natural gas infrastructure on a regional or national basis,⁸⁸ and DOE/FE’s review and approval of projects under the NGA does not constitute a coordinated federal program.

b. Sierra Club’s Position that the Effects of Induced Additional Production of Natural Gas Must Be Considered in the Environmental Analyses Should Be Rejected

Just as it has unsuccessfully done in other export authorization proceedings, Sierra Club argues that DOE/FE must consider the environmental effects of induced additional natural gas production from shale in its review of SPL’s instant applications.⁸⁹ But both FERC and DOE/FE

⁸⁴ See *id.* at 13–17.

⁸⁵ 10 C.F.R. § 1021.104(b) (2013).

⁸⁶ *Found. on Econ. Trends v. Heckler*, 756 F.2d 143, 159 (D.C. Cir. 1985) (quoting *Nat’l Wildlife Fed’n v. Appalachian Reg’l Comm’n*, 677 F.2d 883, 888 (D.C. Cir. 1981)).

⁸⁷ *Nat’l Wildlife Fed’n*, 677 F.2d at 888.

⁸⁸ See *Tex. E. Transmission, LP, and Algonquin Gas Transmission, LLC*, 141 FERC ¶ 61,043 (2012).

⁸⁹ See Sierra Club Filing at 29–32.

have rejected this position, finding that impacts that may result from additional shale gas production are not “reasonably foreseeable” indirect effects under NEPA.⁹⁰ DOE/FE should reach the same conclusion here, and reject Sierra Club’s attempt to evade its settled precedent.⁹¹

Sierra Club contends that, because the appendices to the SPL Total Application and the SPL Centrica Application indicate that the SPAs “support[] and encourage[] the continued development of natural gas resources,”⁹² the NEPA analysis for the Liquefaction Expansion Project “must consider the broader constellation of indirect and cumulative effects” of “all pending export proposals,” including “that LNG exports will induce additional production in the United States.”⁹³ This argument hinges on the notion that the effects of induced natural gas production nationwide are “reasonably foreseeable” effects of the Liquefaction Expansion Project that must be considered in the NEPA analysis for the Liquefaction Expansion Project. “Indirect effects” under NEPA are those that “are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”⁹⁴ Courts have emphasized that

⁹⁰ See *Sabine Pass Liquefaction, LLC*, 139 FERC ¶ 61,039, at PP 94–99 (2012) (“[I]mpacts which may result from additional shale gas development are not ‘reasonably foreseeable’ as defined by the [Council on Environmental Quality (‘CEQ’)] regulations.”); see also *Sabine Pass Final Non-FTA Order* at 28 (“DOE/FE accepts and adopts the Commission’s determination that induced shale gas production is not a reasonably foreseeable effect for purposes of NEPA analysis, for the reasons given by the Commission.”).

⁹¹ Cf. *Sierra Club Filing* at 31 (arguing that, in *Sabine Pass Conditional Non-FTA Order*, DOE FE made “factual and legal errors” in agreeing with FERC that induced shale gas production is not a reasonably foreseeable effect of LNG exports for purposes of NEPA analyses).

⁹² *SPL Total Application*, Ex. C at 1; *SPL Centrica Application*, Ex. B at 1.

⁹³ *Sierra Club Filing* at 12, 13, 26.

⁹⁴ 40 C.F.R. § 1508.8(b) (2013). To the extent that Sierra Club couches its arguments in terms of the “cumulative impacts” of other LNG export projects inducing natural gas production, these too would be indirect effects that must be reasonably foreseeable to be cognizable under NEPA. “Cumulative impact” is defined as “the impact on the environment which results from the incremental impact of the proposed action when added to other past, present, or reasonably foreseeable future actions.” *Id.* § 1508.7. The terms, “impact” and “effect” are interchangeable. See *id.* § 1508.8. “Effects” can be both “direct” and “indirect.” See *id.* Thus, inducement of additional natural gas production would have to be a “reasonably foreseeable” indirect effect of a “reasonably foreseeable” LNG export project in order to be cognizable under NEPA.

cognizable indirect effects “are those ‘which are *caused* by the action,’”⁹⁵ with the Supreme Court explaining that “a ‘but for’ causal relationship is insufficient to make an agency responsible for a particular effect under NEPA.”⁹⁶ Instead, “a plaintiff mounting a NEPA challenge must establish that an alleged effect will ensue as a ‘proximate cause,’ in the sense meant by tort law, of the proposed agency action.”⁹⁷ Agencies need not consider “speculative” effects.⁹⁸

FERC has had multiple other opportunities to consider Sierra Club’s argument that the environmental effects of induced production must be considered in the cumulative impacts analysis for proposed natural gas infrastructure projects, and has consistently rejected this position on the grounds that shale development and its associated effects were not sufficiently causally related to the proposed project.⁹⁹ Just as FERC has found previously that induced production was neither “‘reasonably foreseeable’” nor an “‘effect’” for purposes of a NEPA cumulative impacts analysis within the meaning of the CEQ regulations,¹⁰⁰ the same is true here.

⁹⁵ *City of Shoreacres v. Watersworth*, 420 F.3d 440, 452 (5th Cir. 2005) (quoting 40 C.F.R. § 1508.8(b)).

⁹⁶ *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 767 (2004); *see also Met. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774 (1983) (stating that Congress intended that “the terms ‘environmental effect’ and ‘environmental impact’ in [NEPA] § 102 be read to include a requirement of a reasonably close causal relationship between a change in the physical environment and the effect at issue”).

⁹⁷ *City of Shoreacres*, 420 F.3d at 452.

⁹⁸ *E.g., Webster v. USDA*, 685 F.3d 411, 429 (4th Cir. 2012) (citing *Wyoming v. USDA*, 661 F.3d 1209, 1253 (10th Cir. 2011)); *Sierra Club v. Marsh*, 976 F.2d 763, 768 (1st Cir. 1992).

⁹⁹ *See, e.g., Tex. E. Transmission, LP*, 139 FERC ¶ 61,138, at PP 70–73 (2012); *see also Tenn. Gas Pipeline Co., L.L.C.*, 139 FERC ¶ 61,161, at PP 182–93 (2012); *Cent. N.Y. Oil & Gas Co.*, 137 FERC ¶ 61,121, at PP 81–107 (2011), *reh’g denied*, 138 FERC ¶ 61,104, at PP 33–56 (2012), *aff’d sub nom. Coal. for Responsible Growth and Res. Conservation v. FERC*, 485 Fed. App. 472 (2d Cir. 2012); *see also Transcontinental Pipe Line Co.*, 143 FERC ¶ 61,132, at PP 54–55 (2013) (citing *Pub. Citizen*, 541 U.S. at 767); *Cheniere Creole Trail Pipeline, L.P.*, 142 FERC ¶ 61,137, at P 54 (2013) (rejecting Sierra Club’s argument “that the resulting increase in gas production activities will be an indirect effect of the proposed project that the [EA] should have addressed”).

¹⁰⁰ *Sabine Pass Liquefaction, LLC*, 139 FERC ¶ 61,039, at P 96 (2012).

4. Sierra Club's Economic Arguments Should Be Rejected

Sierra Club alleges that the Liquefaction Expansion Project will “increase domestic gas prices,” “eliminate jobs,” “make most US families worse off,” “cause a net reduction in GDP,” and “increas[e] coal consumption.”¹⁰¹ But it fails to present adequate evidence on any of these points to rebut the presumption that the Liquefaction Expansion Project is in the public interest. Indeed, its contentions are based on long-term, nationwide domestic statistical estimates of aggregate natural gas market dynamics that were prepared for a different purpose. Regarding the positive economic effects of the Liquefaction Expansion Project specifically, the Stage 3 FERC Application noted that “Liquefaction Expansion Project will also stimulate the Louisiana state, regional, and national economies through job creation, increased economic activity and tax revenues, including the direct creation of approximately 3,000 engineering and construction jobs.”¹⁰² And even the broader studies that Sierra Club relies on contradict Sierra Club’s arguments, and contain positive key findings related to the macroeconomic impacts of LNG exports. The NERA Report, for instance, found that “[a]ll export scenarios are welfare-improving for U.S. consumers.”¹⁰³

Sierra Club contends that “exports will . . . reduce employment.”¹⁰⁴ This allegation is made without any reference to the Liquefaction Expansion Project itself, which—as noted above—is projected to create thousands of jobs. Much of the job-loss that Sierra Club contends will result from exports would theoretically be attributable to induced production of natural

¹⁰¹ Sierra Club Filing at 61, 21, 63, 68, 30.

¹⁰² Stage 3 FERC Application at 20.

¹⁰³ NERA Report at 55.

¹⁰⁴ Sierra Club Filing at 66.

gas,¹⁰⁵ and therefore—as discussed above—would not be a cognizable indirect effect of the Liquefaction Expansion Project.

Sierra Club also argues that “exports will regressively transfer wealth from working class families to large corporations.”¹⁰⁶ Sierra Club’s professed concern for the working class apparently does not prevent it from opposing a project that would support thousands of construction jobs. The NERA Report acknowledged that, while LNG exports would create higher income in total in the U.S., they would shift the composition of income so that both wage income and income from capital investment would be reduced, but then explained that LNG exports would also create two additional sources of income, in the form of higher export revenues and higher natural gas income (benefits that would accrue to an increasingly large number of workers thanks to retirement savings).¹⁰⁷ Thus, the NERA Report concluded that “[t]he 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 natural gas prices.”¹⁰⁸ Sierra Club has not presented any evidence showing negative distributional consequences to any particular socioeconomic sector.¹⁰⁹

Finally, Sierra Club asserts that exports “may cause a net decrease in GDP,” which it claims was the NERA Report’s only measure of the public interest.¹¹⁰ The premise is incorrect: as DOE/FE recently explained, “the NERA study presented the macroeconomic impacts of LNG

¹⁰⁵ See, e.g., Sierra Club Filing at 64 (discussing “the ‘resource curse’ and boom-bust cycle that plagues extractive economies”).

¹⁰⁶ *Id.* at 21.

¹⁰⁷ See *supra* at 11–12.

¹⁰⁸ NERA Report at 7–8.

¹⁰⁹ DOE/FE recently dismissed this same argument by Sierra Club, finding that Sierra Club had failed to present compelling evidence of distributional consequences “so negative as to outweigh net positive benefits to the U.S. economy as a whole.” Lake Charles Non-FTA Order at 87.

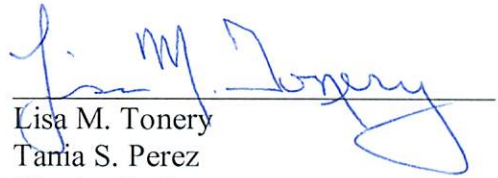
¹¹⁰ Sierra Club Filing at 68.

exports using the different statistical measures [of] price, welfare, GDP, aggregate consumption, aggregate investment, natural gas export revenues, sectoral output, and wages and other household incomes. NERA did not confuse the concepts of welfare growth and GDP growth.”¹¹¹ Nor is there any basis for the argument that LNG exports will reduce GDP, for which the NERA Report predicted positive impacts under all modeled scenarios.¹¹²

CONCLUSION

For the foregoing reasons, the intervention motions of AEA, IECA, and Sierra Club should be denied, and Sierra Club’s protest should be rejected.

Respectfully submitted,



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¹¹¹ Lake Charles Non-FTA Order at 78.

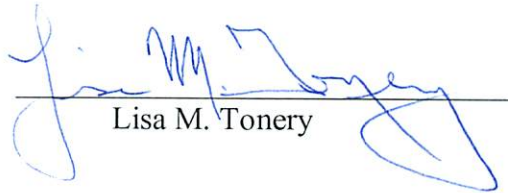
¹¹² See NERA Report at 56–57.

VERIFICATION

State of New York)

County of New York)

BEFORE ME, the undersigned authority, on this day personally appeared Lisa M. Tonery, who, having been by me first duly sworn, on oath says: that she is the Attorney for Sabine Pass Liquefaction, LLC, and is duly authorized to make this Verification; that she has read the foregoing instrument; and that the facts therein stated are true and correct to the best of her knowledge, information, and belief.



Lisa M. Tonery

SWORN TO AND SUBSCRIBED before me on the 8th day of October, 2013.

Name: 

Title: Notary Public


My Commission expires:

McCALLUM GEORGE DIONNE
Notary Public, State of New York
No. 01MC6249522
~~Qualified in Queens County
Commission Expires Oct. 11, 2015~~

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at New York, N.Y., this 8th day of October, 2013.



Dionne McCallum-George
*Legal Secretary on behalf of
Sabine Pass Liquefaction, LLC*