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June 4, 2013

Via Email

Ms. Larine A. Moore
Docket Room Manager
U.S. Department of Energy
FE-34
P.O. Box 44375
Washington, DC 20026-4375
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Re: FE Docket No. 13-04-LNG
Answer of Trunkline LNG Export, LLC to the Protests of the American Public
Gas Association and the Sierra Club

Dear Ms. Moore:

Please accept for filing in FE Docket No. 13-04-LNG, pursuant to 10 C.F.R. § 590.304(f), the enclosed Answer of Trunkline LNG Export, LLC to the Protests of the American Public Gas Association and the Sierra Club.

If you have any questions regarding this filing, please do not hesitate to contact me at (202) 220-6915. Thank you for your assistance.

Respectfully submitted,

/s/ James F. Moriarty
James F. Moriarty
Attorney for Trunkline LNG Export, LLC

Enclosure

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

Trunkline LNG Export, LLC

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FE Docket No. 13-04-LNG

**ANSWER OF TRUNKLINE LNG EXPORT, LLC TO
THE PROTESTS OF THE AMERICAN PUBLIC GAS ASSOCIATION
AND THE SIERRA CLUB**

Pursuant to Section 590.304(f) of the Department of Energy’s (“DOE”) regulations, 10 C.F.R. § 590.304(f) (2013), Trunkline LNG Export, LLC (“TLNG Export”) hereby submits this Answer to the Motion for Leave to Intervene and Protest filed by the American Public Gas Association (“APGA Protest”) and the Motion to Intervene, Protest, and Comments filed by the Sierra Club (“Sierra Club Protest”) in the above-captioned proceeding on May 20, 2013. In support of this Answer, TLNG Export states the following:

**I.
PROCEDURAL BACKGROUND**

On January 9, 2013, TLNG Export filed an application pursuant to Section 3 of the Natural Gas Act (“NGA”), 15 U.S.C. § 717b (2006), and Part 590 of the DOE regulations, 10 C.F.R. § 590, with the DOE Office of Fossil Energy (“DOE/FE”) requesting long-term authorization to export 15 million metric tons per year of liquefied natural gas (“LNG”) (approximately 730 bcf of natural gas using a conversion factor of 48.7 bcf of natural gas per million metric tons of LNG) produced from domestic sources to (1) any country with which the United States has, or in the future may enter into, a free trade agreement (“FTA”) requiring national treatment for trade in natural gas, and (2) any country with which the United States does

not have a FTA requiring national treatment for trade in natural gas and with which trade is not prohibited by United States law or policy (“Application”).

The Application seeks authorization to export LNG from the Lake Charles Terminal owned by Trunkline LNG Company, LLC, an affiliate of TLNG Export. The amount of LNG sought to be exported from the Lake Charles Terminal is the same amount for which export authorization is being sought by Lake Charles Exports, LLC (“LCE”) in its application filed May 6, 2011 and amended May 26, 2011 in DOE/FE Docket No. 11-59-LNG.¹ TLNG Export’s Application is non-additive - TLNG Export is not seeking to export any additional volumes of LNG from the Lake Charles Terminal.

On March 7, 2013, DOE/FE issued Order No. 3252 granting TLNG Export long-term authorization to export LNG to any country that has or will enter into a FTA with the United States that requires national treatment for trade in natural gas.²

On March 20, 2013, DOE/FE gave notice in the Federal Register of TLNG Export’s Application with respect to exporting LNG to non-FTA countries and established May 20, 2013, as the deadline for comments on and protests to TLNG Export’s Application. The APGA Protest and the Sierra Club Protest were filed on May 20, 2013.

II. **ANSWER TO PROTESTS**

The APGA Protest and the Sierra Club Protest largely consist of the repetition of earlier arguments made by APGA and the Sierra Club in opposition to nearly every application filed at the DOE to export LNG to non-FTA countries.³ In addition, APGA filed a protest to LCE’s

¹ On July 22, 2011, the DOE/FE approved that portion of LCE’s application seeking to export LNG to FTA nations. The non-FTA portion of LCE’s application is currently pending. *See Lake Charles Exports, LLC*, DOE/FE Order No. 2987 (July 22, 2011).

² *Trunkline LNG Export, LLC*, DOE/FE Order No. 3252 (March 7, 2013).

³ *See e.g., Motion for Leave to Intervene Out-of-Time and Protest of the American Public Gas Association*, FE Docket No. 10-111-LNG (Sabine Pass Liquefaction, LLC) (Mar. 4, 2011); *Sierra Club’s Motion to Intervene Out-*

application in Docket No. 11-59-LNG, which LCE fully answered.⁴ As explained below, the majority of the arguments raised were rejected by the DOE/FE in its orders authorizing LNG exports to non-FTA countries from the Sabine Pass and Freeport LNG terminals.⁵

Under Section 3(a) of the NGA, a rebuttable presumption exists in favor of DOE/FE approval of applications to export natural gas. APGA and the Sierra Club each fail to overcome this presumption and put forth the required evidence demonstrating that the requested authorization is inconsistent with the public interest. For this reason and because of DOE/FE's prior rejection of APGA's and Sierra Club's arguments, DOE/FE should grant TLNG Export's request for authorization to export LNG to non-FTA countries.

A. The Sierra Club's Motion to Intervene Should be Denied

The Sierra Club claims that its members have "vital economic, aesthetic, spiritual, personal, and professional interests" in TLNG Export's proposal to export LNG.⁶ However, the Sierra Club fails to allege any specific interest in TLNG Export's proposal and simply continues its unsupported generalized attack on the natural gas industry.⁷ Under the DOE/FE's regulations,

of-Time, Protest and Comments, FE Docket No. 10-111-LNG (Sabine Pass Liquefaction, LLC) (Apr. 18, 2012); *Motion for Leave to Intervene and Protest of the American Public Gas Association*, FE Docket No. 10-161-LNG (Freeport LNG Expansion, L.P.) (Mar. 28, 2011); *Motion for Leave to Intervene and Protest of the American Public Gas Association*, FE Docket No. 11-59-LNG (Lake Charles Exports, LLC) (Aug. 10, 2011); *Motion for Leave to Intervene and Protest of the American Public Gas Association*, FE Docket No. 11-128-LNG (Dominion Cove Point LNG, LP) (Feb. 6, 2012); *Sierra Club's Motion to Intervene, Protest and Comments*, FE Docket No. 11-128-LNG (Dominion Cove Point LNG, LP) (Feb. 6, 2012); *Motion for Leave to Intervene and Comments of the American Public Gas Association*, FE Docket No. 11-141-LNG (Carib Energy (USA) LLC) (Feb. 27, 2012); *Motion for Leave to Intervene and Protest of the American Public Gas Association*, FE Docket No. 11-161-LNG (Freeport LNG Expansion, L.P.) (Apr. 13, 2012); *Sierra Club's Motion to Intervene, Protest and Comments*, FE Docket No. 11-161-LNG (Freeport LNG Expansion, L.P.) (Apr. 13, 2012); *Motion for Leave to Intervene and Protest of the American Public Gas Association*, FE Docket No. 11-162-LNG (Cameron LNG, LLC) (Apr. 23, 2012); *Sierra Club's Motion to Intervene, Protest and Comments*, FE Docket No. 11-162-LNG (Cameron LNG, LLC) (Apr. 23, 2012).

⁴ *Answer of Lake Charles Exports, LLC to the Protest of the American Public Gas Association and the Comment of the Industrial Energy Consumers of America*, FE Docket No. 11-59-LNG (Aug. 25, 2011).

⁵ *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961 (May 20, 2011) ("Sabine Order"); *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, DOE/FE Order No. 3282 (May 17, 2013) ("Freeport Order").

⁶ Sierra Club Protest at 2.

⁷ See, e.g., The Sierra Club, *Beyond Natural Gas: Dirty, Dangerous and Run Amok*, <http://content.sierraclub.org/naturalgas/> (Alleging, with regard to LNG exports: "Exporting natural gas would

a motion to intervene must “set[] out clearly and concisely the facts upon which the petitioner's claim of interest is based.”⁸ The Sierra Club has alleged no facts specific to TLNG Export’s proposal to export LNG to non-FTA countries. Instead, the Sierra Club makes generalized assertions of environmental and economic harm and states that it has 2,819 members in Louisiana and 601,150 members overall.⁹ The Sierra Club fails to explain what specific impact the proposed export from the Lake Charles terminal is alleged to have on its members in Louisiana or elsewhere and fails to identify any member that opposes TLNG Export’s proposal.

Additionally, the Sierra Club was given ample opportunity earlier this year to express its generic views on the LNG industry in comments filed to the two-part study of the cumulative economic impact of LNG exports (“LNG Export Study”). The Sierra Club and its members filed thousands of initial and reply comments on the LNG Export Study, all advancing the same generalized assertions of environmental harm.¹⁰ DOE/FE thoroughly reviewed and discussed these comments in the recent Freeport Order.¹¹ The Sierra Club has not demonstrated how its interests would be impacted by the grant of TLNG Export’s requested authorization and, accordingly, has not met the standard for intervention. As explained herein, even if the Sierra

increase fracking and carbon emissions, put sensitive ecological areas at risk, and do nothing to address our country's energy challenges. Natural gas companies envision a network of winding pipelines and noisy, polluting compressors that connect the drills to the docks, slicing through wild lands, rivers, and backyards. Pipelines and gas wells will inevitably leak or rupture, risking lives and fouling the environment where people live and further polluting the air we breathe and the water we drink.”).

⁸ 10 C.F.R. § 590.303(b).

⁹ Sierra Club Protest at 2.

¹⁰ See, e.g., *9,426 Initial Comments Submitted by the Sierra Club on behalf of 9,426 Individuals*, http://www.fossil.energy.gov/programs/gasregulation/authorizations/export_study/export_study_initial_comments.html; *Sierra Club Reply Comments*, http://www.fossil.energy.gov/programs/gasregulation/authorizations/export_study/export_study_reply_comments.html.

¹¹ Freeport Order at 56 (Noting that the Sierra Club “filed comments on behalf of itself and a coalition of non-profit organizations, including Catskill Citizens for Safe Energy, Center for Biological Diversity, Clean Air Council, Columbia Riverkeeper, Delaware Riverkeeper, Lower Susquehanna Riverkeeper, Shenandoah Riverkeeper, and Upper Green River Alliance.”).

Club is granted intervenor status, the claims raised in its Protest are not the proper subject of this proceeding. Accordingly, the Sierra Club's Motion to Intervene should be denied.¹²

B. Both the APGA and the Sierra Club Fail to Meet the Legal Standard Under NGA Section 3(a)

Pursuant to Section 3(a) of the NGA, DOE/FE "shall issue" an order authorizing natural gas exports unless it finds that the proposed exportation "will not be consistent with the public interest."¹³ As explained by DOE/FE in the recent Freeport Order, Section 3(a) "creates a rebuttable presumption that a proposed export of natural gas is in the public interest."¹⁴ Accordingly, "DOE/FE must grant such an application unless opponents of the application overcome that presumption by making an affirmative showing of inconsistency with the public interest."¹⁵ In the Sabine Order, DOE/FE explained that in reviewing applications to export natural gas it continues to focus on:

the domestic need for the natural gas proposed to be exported; whether the exports pose a threat to the security of domestic natural gas supplies; and any other issue determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements.¹⁶

DOE/FE further relies on the criteria set forth in its 1984 Policy Guidelines,¹⁷ which seek to "minimize federal control and involvement in energy markets and to promote a balanced and

¹² Anticipating resistance to its Motion to Intervene, and consistent with its tactics in other DOE/FE proceedings, the Sierra Club attempts to reserve the right to reply to any opposition by citing to the DOE/FE's regulations for motions and additional procedures. Sierra Club Protest at n.2. TLNG Export opposes this improper attempt by the Sierra Club to carve out additional rights for itself.

¹³ 15 U.S.C. § 717b(a).

¹⁴ Freeport Order at 6.

¹⁵ *Id.*

¹⁶ Sabine Order at 29.

¹⁷ *Id.* at 28 (citing *Policy Guidelines and Delegation Orders Relating to the Regulation of Imported Natural Gas*, 49 Fed. Reg. 6684 (Feb. 22, 1984) ("Policy Guidelines")). While the Policy Guidelines are applicable to applications to import natural gas, DOE/FE applies the same policies to natural gas export applications. See *Phillips Alaska Natural Gas Corp. and Marathon Oil Co.*, Order No. 1473 at 14 (Apr. 2, 1999).

mixed energy resource system.”¹⁸ The Policy Guidelines state that “[t]he market, not government, should determine the price and other contract terms of imported [or exported] natural gas.”¹⁹

APGA and the Sierra Club have each failed to overcome the statutory presumption in favor of applications to export natural gas. Furthermore, as detailed below, the arguments raised by APGA and the Sierra Club in this proceeding are essentially the same as the arguments raised in previous proceedings. DOE/FE has already soundly rejected these arguments in the Sabine Order and the Freeport Order. To the extent APGA and the Sierra Club attempt to renew these same arguments, their Protests here amount to an improper collateral attack on DOE/FE’s findings and rationale in the Sabine Order and the Freeport Order. APGA did not appeal the Sabine Order and the Sierra Club’s request for rehearing was denied.²⁰ Though the time has not yet run for appeals of the Freeport Order, it is improper for APGA and the Sierra Club to continue to advance arguments in this proceeding, that have been thoroughly analyzed and then completely rejected by DOE/FE, without presenting any new evidence or analysis.

In its Application, TLNG Export cited a wide range of United States government data, government studies and publicly available third-party studies,²¹ and put forth a substantial analysis of the public interest factors weighing in favor of DOE/FE’s approval of TLNG Export’s proposal. Just as it did in the Sabine Pass proceeding, APGA “alleged a variety of negative consequences to the public interests from a grant of the requested authorizations,” but has “not challenged the applicant’s claims” regarding the benefits of granting the requested

¹⁸ Sabine Order at 28.

¹⁹ *Id.* (quoting Policy Guidelines); *see also* Freeport Order at 6.

²⁰ The Sierra Club filed for rehearing of the portion of the Sabine Order that denied its untimely motion to intervene and also sought a stay of the order. DOE/FE denied the Sierra Club’s request for rehearing and stay. *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961-B (Jan. 25, 2013).

²¹ *See, e.g.*, Application at 10-18 (citing information and studies by the U.S. Energy Information Administration, Deloitte MarketPoint LLC and NERA Economic Consulting).

export authorization.²² Both APGA and the Sierra Club fail to support their arguments “by factual studies or analyses” and “have not demonstrated that any potential negative impacts associated with a grant of the requested authorization are likely to outweigh the overall benefits from such an authorization.”²³ DOE/FE rejected this same approach by APGA in the Sabine Order, finding that it “has not been shown that a grant of the requested authorization will be inconsistent with the public interest.”²⁴ In the Freeport Order, the DOE/FE noted that APGA’s protest “was not supported by any significant analysis” and did not “provide a basis for rejecting [Freeport’s] claims of numerous economic and non-economic benefits from a grant of the Application.”²⁵

APGA and the Sierra Club have failed to distinguish this proceeding or the evidence presented by TLNG Export from the Sabine or Freeport proceedings or the evidence on which DOE/FE based its decisions in the Sabine Order or the Freeport Order, thus APGA and the Sierra Club have not shown why DOE/FE should reverse course in this proceeding. Consistent with its prior orders in Sabine and Freeport, DOE/FE should find in this proceeding that the APGA and Sierra Club arguments in opposition to the Application fail to overcome the statutory presumption in favor of granting the requested export authorization.

C. DOE/FE Previously Considered and Rejected APGA’s and the Sierra Club’s Arguments

In its Protest, APGA repeats the general theme that natural gas exports will lead to an increase in domestic natural gas prices which is inherently inconsistent with the public interest and will overly burden domestic consumers of natural gas.²⁶ APGA claims that prices will rise

²² Sabine Order at 30.

²³ *Id.* See also Freeport Order at 75.

²⁴ Sabine Order at 42. The Sierra Club’s late motion to intervene in the Sabine proceeding was denied by the DOE/FE. See *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961-A (Aug. 7, 2012).

²⁵ Freeport Order at 110.

²⁶ APGA Protest at 4.

because exports create greater demand for domestically produced natural gas, but also that exports will lower international prices leading to a convergence to a global LNG price.²⁷ Not only does APGA fail to submit any data or studies supporting its economic claims, it also ignores the findings of the Sabine Order and the Freeport Order on these issues.

In the Sabine Order, DOE/FE rejected APGA's argument with regard to the global LNG price stating that APGA (and others) "have not explained why or how the export activity would cause the international price to be adopted within the well-supplied domestic natural gas market."²⁸ DOE/FE also rejected APGA's arguments regarding increased gas prices resulting from greater LNG exports. DOE/FE found that the projected increase in gas prices from additional exports of natural gas "reflects increasing marginal costs of additional domestic production for LNG exports."²⁹ DOE/FE "[did] not find that the price increase is due to an alleged convergence of domestic natural gas prices with prices in certain international markets where the price of natural gas is linked to the price of oil"³⁰

Like in the Sabine proceeding, APGA's "arguments are not supported by factual studies or analyses" and they "have not demonstrated that any potential negative impacts associated with a grant of the requested authorization are likely to outweigh the overall benefits"³¹ from granting TLNG Export the requested export authorization.³² Rather, APGA continues to assert without support that prices will increase generally and that any price increase is inherently not in the

²⁷ *Id.* at 16.

²⁸ Sabine Order at 34.

²⁹ *Id.* at 29–30.

³⁰ *Id.*

³¹ *Id.* at 30.

³² *Id.* at 38 ("The opponents of the requested authorization have not submitted evidence sufficient to rebut [the economic benefits cited by the applicant]. Nor have they provided an analysis or data demonstrating a negative impact from the proposed export on any specific economic factors or other public interest considerations within the United States.... Overall, therefore, we find that the applicant has submitted substantial evidence of economic and public benefits whereas the opponents of the authorization have not supported a finding that the requested authorization is inconsistent with the public interest.").

public interest. APGA has not presented sufficient evidence to meet its burden in this proceeding and overcome the statutory presumption favoring export authorizations.

As it did here, APGA also argued in the Sabine proceeding that granting the requested export authorization will keep the U.S. dependent on foreign oil. DOE/FE rejected such argument in the Sabine Order. There, DOE/FE was “not persuaded” by APGA’s argument that “consumption of domestically produced natural gas within the United States would displace the consumption of oil.”³³ The argument made by APGA is based on the erroneous premise that oil and natural gas are substitutes for each other in any material respect. In the Sabine Order, DOE/FE found that they are not.³⁴ APGA argues that allowing natural gas exports will discourage development of natural gas transportation technology and appears to be requesting that DOE/FE push the creation of a natural gas-driven transportation sector.³⁵ However, government action blocking exports of natural gas and somehow forcing “replacement of current gasoline-powered fleets with natural gas vehicles”³⁶ would be inconsistent with the DOE/FE’s view that one of the “goals of the Policy Guidelines [is] to minimize federal control and involvement in energy markets.”³⁷ In fact, the export of LNG will reduce reliance on foreign oil, since as DOE/FE has recognized, and APGA has not disputed, “the production of natural gas within the United States will yield certain natural gas liquids that will in part offset the need to import oil.”³⁸

In the Freeport Order, DOE/FE also specifically reviewed and rejected the same arguments APGA and the Sierra Club are recycling in this proceeding. Through the Freeport

³³ *Id.* at 36.

³⁴ *Id.*

³⁵ APGA Protest at 12.

³⁶ *Id.*

³⁷ Sabine Order at 28.

³⁸ *Id.* at 36.

Order, DOE/FE took the opportunity to address protests received to Freeport's application (including one from APGA), as well as comments received in response to the LNG Export Study.³⁹ DOE/FE commissioned the two-part LNG Export Study in order to assess the cumulative economic impact of LNG exports.⁴⁰ According to DOE/FE:

The first part of the study was conducted by EIA and looked at the potential impact of additional natural gas exports on domestic energy consumption, production, and prices under several export scenarios prescribed by DOE/FE. . . . The second part of the study, performed by NERA Economic Consulting, assessed the potential macroeconomic impact of LNG exports using its energy-economy model (the "N_{ew}ERA" model).⁴¹

DOE/FE then invited public comment on the LNG Export Study and undertook a point-by-point analysis of the comments raised in response to the Study.⁴² The end result of this analysis was a rejection of the economic arguments raised by APGA and others and a finding that "the best available evidence supports the conclusion that [Freeport's] proposed exports will benefit the U.S. economy overall and are consistent with the public interest."⁴³ DOE/FE concluded that the proposed exports "are likely to yield net economic benefits to the United States" and "granting the requested authorization is unlikely to affect adversely the availability of natural gas supplies to domestic consumers or result in natural gas price increases or increased price volatility such as would negate the net economic benefits to the United States."⁴⁴

³⁹ In the Freeport Order, DOE/FE devoted a full three pages to describing the arguments raised in APGA's Motion to Intervene and Protest. The arguments raised by APGA in the Freeport proceeding are similar to those raised here, with the general theme being that exporting natural gas would have adverse implications for domestic natural gas consumers. As explained, DOE/FE rejected these arguments in the Freeport Order.

⁴⁰ Freeport Order at 30.

⁴¹ *Id.*

⁴² *Id.* at Section VII.

⁴³ *Id.* at 112.

⁴⁴ *Id.* at 5.

Specifically, in response to the argument that exports would negatively impact U.S. households (which APGA raises again here),⁴⁵ DOE/FE concluded that “[w]hile 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.”⁴⁶ DOE/FE stated that “[n]one of the commenters advancing this argument has performed a quantitative analysis of the distributional consequences of authorizing LNG exports at the household level.”⁴⁷ Despite such rejection of this argument in the Freeport Order, APGA continues to advance this same argument without providing any analysis or explanation of why DOE/FE should reach a different conclusion in this proceeding. APGA has simply not met its burden of demonstrating that the proposed export of LNG is inconsistent with the public interest.

Furthermore, in the Freeport Order DOE/FE rejected the contention, also advanced here by APGA,⁴⁸ that LNG exports from the U.S. will cause domestic prices to rise to the level of international prices.⁴⁹ DOE/FE accepted the conclusion reached in the LNG Export Study that it is unlikely that domestic prices will rise to international levels and concluded that in a competitive market, “U.S. natural gas prices would be lower than international LNG prices” and “the introduction of LNG exported from the United States into the international market would tend to exert downward pressure on the prevailing higher delivered price for LNG in those foreign markets.”⁵⁰ APGA’s economic impact arguments were thoroughly considered and rejected by DOE/FE and should likewise be rejected here. In the Freeport Order, DOE/FE

⁴⁵ APGA Protest at 7-8.

⁴⁶ Freeport Order at 75.

⁴⁷ *Id.*

⁴⁸ APGA Protest at 13.

⁴⁹ Freeport Order at 101.

⁵⁰ *Id.*

concluded that APGA’s protest did not “provide a basis for rejecting [Freeport’s] claims of numerous economic and non-economic benefits from a grant of the Application” and did not “rebut the statutory presumption that the requested authorization is consistent with the public interest.”⁵¹ There is no basis for a different conclusion in this proceeding.

In addition, DOE/FE addressed in the Freeport Order the Sierra Club’s argument that DOE/FE must consider the cumulative impact of all pending LNG export proposals. DOE/FE stated that it “recognized in *Sabine Pass* that the cumulative impact of *Sabine Pass* and additional future LNG export authorizations could affect the public interest. To address this issue, DOE/FE undertook a two-part study of the cumulative economic impact of LNG exports.”⁵² Therefore, the LNG Export Study and corresponding extensive analysis by DOE/FE specifically addressed the cumulative impact argument of the Sierra Club and concluded that the proposed export was not inconsistent with the public interest. The Sierra Club has provided no information or evidence that would support a different conclusion in this proceeding.

D. The Sierra Club’s Environmental Concerns Are Not the Proper Subject of this Proceeding

The Sierra Club Protest alleges a wide range of environmental consequences and takes issue with the environmental review process established under the National Environmental Policy Act (“NEPA”).⁵³ Not only are the Sierra Club’s allegations unsupported, they are not the proper subject of the instant DOE/FE proceeding. After all, DOE/FE has already authorized TLNG Export to export up to 15 million metric tons per year of domestically produced LNG from the Lake Charles Terminal to FTA nations.⁵⁴ Nevertheless, TLNG Export disagrees with the Sierra Club’s characterization of the potential environmental effects of the proposed LNG

⁵¹ *Id.* at 110.

⁵² *Id.* at 30.

⁵³ Sierra Club Protest at Section III.

⁵⁴ *Trunkline LNG Export, LLC*, DOE/FE Order No. 3252 (March 7, 2013).

exports and reserves the right to respond to the substance of such claims once they are raised in the appropriate forum at the appropriate time.

With regard to the proper forum for raising environmental issues, DOE/FE specifically addressed the Sierra Club's allegations in the Freeport Order stating that DOE/FE intends to complete its NEPA review of Freeport's application "as a cooperating agency in tandem with FERC's⁵⁵ review of the Liquefaction Project" and that "the authorization issued in the instant proceeding will be conditioned on the satisfactory completion of the environmental review process at FERC."⁵⁶ As directly applicable here, DOE/FE stated that "persons wishing to raise questions regarding the environmental review of the present application are responsible for doing so within the FERC proceedings."⁵⁷ The Sierra Club's arguments can only be raised in a FERC proceeding seeking authorization to construct the LNG export facilities.⁵⁸ The Sierra Club has already demonstrated its awareness of TLNG Export's required FERC pre-filing proceeding and the comment procedure by filing NEPA Scoping Comments on April 22, 2013 in that proceeding.⁵⁹

The Sierra Club's claim that DOE/FE cannot issue a conditional order without first conducting an independent NEPA analysis is wrong.⁶⁰ The United States Congress has clearly assigned to FERC the NEPA environmental review responsibilities for LNG export facilities. The Energy Policy Act of 2005 specifically amended the Natural Gas Act to give FERC "exclusive authority" over the siting, construction, expansion, or operation of an LNG terminal⁶¹

⁵⁵ FERC is the Federal Energy Regulatory Commission.

⁵⁶ Freeport Order at 97 (citing 10 C.F.R. § 590.402 that authorizes DOE/FE to issue a conditional order prior to issuance of a final opinion and order).

⁵⁷ *Id.*

⁵⁸ As explained in the Application, TLNG Export is currently participating in the FERC Pre-Filing Review Process in FERC Docket No. PF12-8-000.

⁵⁹ See *NEPA Scoping Comments of Sierra Club*, FERC Docket No. PF12-8-000 (filed Apr. 22, 2013).

⁶⁰ Sierra Club Protest at 18.

⁶¹ 15 U.S.C. § 717b(e)(1).

and designated FERC as the “lead agency for the purposes of coordinating all applicable Federal authorizations and for the purposes of complying with the National Environmental Policy Act of 1969.”⁶² Accordingly, FERC sets the schedule for federal authorizations and ensures that cooperating agencies comply with the deadlines set by FERC.⁶³ This includes, but is not limited to, coordination of any required approvals under the Endangered Species Act and National Historic Preservation Act.⁶⁴ This clear procedural mechanism mandated by federal statute not only provides sufficient opportunity for comment by interested parties such as the Sierra Club, but it also allows DOE/FE to be involved as a cooperating agency and independently review FERC’s findings before issuing a final order.⁶⁵ The lead agency concept encourages cooperation and efficiency between federal agencies during the review process. As courts have held, agencies “are not required to duplicate the work done by another federal agency which also has jurisdiction over a project. NEPA regulations encourage agencies to coordinate on such efforts.”⁶⁶

Consistent with the NEPA lead agency concept, DOE/FE has a well-accepted practice of issuing orders for the export of LNG conditioned on the completion of FERC’s environmental review.⁶⁷ In fact, DOE/FE’s regulations provide for the issuance of a conditional order.⁶⁸ The Sierra Club improperly cites to 10 C.F.R. Section 1021.211 in support of its claim that DOE’s regulations specifically prohibit taking any action prior to the completion of the NEPA review

⁶² 15 U.S.C. § 717n(b)(1).

⁶³ 15 U.S.C. § 717n(c).

⁶⁴ The Sierra Club also erroneously claims that the DOE/FE must conduct a separate inquiry under the Endangered Species Act and National Historic Preservation Act. *See* Sierra Club Protest at 10-11.

⁶⁵ *See* Freeport Order at 121 (“All parties are advised that the issues addressed herein regarding the export of natural gas will be reexamined at the time of the DOE’s review of the FERC environmental analysis”).

⁶⁶ *Sierra Club v. U.S. Army Corps of Eng’rs*, 295 F.3d 1209, 1215 (11th Cir. 2002).

⁶⁷ *See, e.g.*, Sabine Order at 40-41; Freeport Order at 121; *Rochester Gas and Electric Corp.*, DOE/FE Order No. 503 (May 16, 1991); *Great Lakes Transmission Co.*, DOE/FE Order No. 343 (Oct. 25, 1989).

⁶⁸ 10 C.F.R. § 590.402 (“The Assistant Secretary may issue a conditional order at any time during a proceeding prior to issuance of a final opinion and order. 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.”).

process.⁶⁹ However, Section 1021.211 applies only when the DOE/FE itself is required to prepare a NEPA Environmental Assessment or Environmental Impact Statement. This is evident from the language of the regulation itself that states: “*While DOE is preparing an [Environmental Impact Statement]* that is required under § 1021.300(a) of this part, DOE shall take no action concerning the proposal that is the subject of the EIS before issuing an ROD [Record of Decision].”⁷⁰ As explained above, under the Natural Gas Act, DOE/FE is not the lead agency for environmental review of LNG export applications and therefore would not be charged with preparing an Environmental Impact Statement under its regulations. The Sierra Club’s citation to this regulation is entirely misplaced and does not change DOE/FE’s firmly established authority to issue an order conditioned on completion of the environmental review process by FERC.

Finally, the Sierra Club’s assertions of environmental harm are not directed specifically at the merits of the TLNG Export proposal but rather are a continuation of its widespread attack on the natural gas industry as a whole. Such claims should not be considered as part of the review of TLNG Export’s proposal. As the United States Supreme Court has clearly stated, “[n]either the language nor history of NEPA suggest that it was intended to give citizens a general opportunity to air their policy objections The political process, and not NEPA, provides the appropriate forum in which to air policy disagreements.”⁷¹ Consistent with its prior actions, DOE/FE should issue a conditional order authorizing the proposed exports, pending FERC completion of the environmental review process.

⁶⁹ Sierra Club Protest at 18.

⁷⁰ 10 C.F.R. § 1021.211 (emphasis added).

⁷¹ *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 777 (1983).

III.
CONCLUSION

For the foregoing reasons, Trunkline LNG Export, LLC respectfully requests that DOE/FE (i) deny the Sierra Club's motion to intervene; (ii) reject the arguments set forth in the APGA Protest and the Sierra Club Protest; and (iii) find that granting the remaining non-FTA authorization requested in TLNG Export's January 10, 2013 Application to enable TLNG Export to export domestically produced LNG from the Lake Charles LNG terminal to any country with which trade is not prohibited by U.S. law or policy is not inconsistent with the public interest.

Respectfully submitted,

/s/ James F. Moriarty
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LLC*

Dated: June 4, 2013

VERIFICATION

Washington, D.C.)

BEFORE ME, the undersigned authority, on this day personally appeared James F. Moriarty, who, having been by me first duly sworn, on oath says that he is an Attorney for Trunkline LNG Export, LLC, and is duly authorized to make this Verification on behalf of Trunkline LNG Export, LLC; that he has read the foregoing instrument and that the facts therein stated are true and correct to the best of his knowledge, information and belief.

[Signature]
James F. Moriarty

SWORN TO AND SUBSCRIBED before me on the 3rd day of June, 2013.

[Signature]

Name: Thar Roeung Heil
Title: Notary Public



My Commission expires:
11-14-16

THAR ROEUNG HEIL
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires November 14, 2016

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 this proceeding.

Dated at Washington, DC this 4th day of June, 2013.

/s/ James F. Moriarty
James F. Moriarty