UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

Trunkline LNG Export, LLC	**)**	**FE Docket No. 13-04-LNG**

ANSWER OF TRUNKLINE LNG EXPORT, LLC TO THE SIERRA CLUB'S REPETITIVE MOTION TO REPLY AND REPLY

Pursuant to Sections 590.302(b) and 590.304(f) of the Department of Energy's ("DOE") regulations, 10 C.F.R. §§ 590.302(b) and 590.304(f) (2013), Trunkline LNG Export, LLC ("TLNG Export") hereby submits this Answer to the Sierra Club's Renewed Motion to Reply and Reply ("Sierra Club Reply") filed in the above-captioned proceeding on June 18, 2013. TLNG Export respectfully requests that DOE deny the Sierra Club's improper attempt to supplement the record following the close of the comment period in this proceeding. 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. On May 20, 2013, the Sierra Club filed a Motion to Intervene, Protest and Comments ("Sierra Club Protest"). On June 4, 2013, TLNG Export filed a comprehensive answer to the Sierra Club's Protest. On June 18, 2013, nearly a month after the close of the comment period in this proceeding, the Sierra Club filed its improper Reply.

[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).

II.
ANSWER TO MOTION TO REPLY

The Sierra Club Reply is procedurally improper and should be rejected. In a footnote to its original Protest, the Sierra Club attempted to reserve the right to reply in the event that TLNG Export opposed its Motion to Intervene.[3] Inexplicably, the Sierra Club now claims that TLNG Export did not oppose its request to reserve the right to reply, which is untrue.[4] Specifically, in its Answer to the Sierra Club Protest, TLNG Export clearly stated:

> 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.[5]

TLNG Export renews its objection to the Sierra Club's effort to garner additional rights and continue to supplement the record in this proceeding. The Federal Register notice issued in this proceeding specifically set 4:30 p.m. eastern time on May 20, 2013 as the deadline for comments.[6] The Sierra Club seeks to justify its attempt to circumvent the DOE/FE's procedural rules by citation to DOE regulations at 10 C.F.R. §§ 590.302(a) and 590.310. According to the Sierra Club, these regulations "allow any party to move for additional procedures in any case."[7]

First, Section 590.302(a), pertaining to motions before DOE, states that the motion "shall set forth the ruling or relief requested and state the grounds and the statutory or other authority relied upon."[8] In its Protest, the Sierra Club cited to Section 590.302(a) itself and Section 590.310 as the sole authority relied upon in support of its motion for additional procedures.[9] In

[3] Sierra Club Protest at n.2.
[4] Sierra Club Reply at 1.
[5] TLNG Export Answer at n.12 (emphasis added).
[6] 78 Fed. Reg. 17189 (Mar. 20, 2013).
[7] Sierra Club Reply at 1.
[8] 10 C.F.R. § 590.302(a).
[9] Sierra Club Protest at n.2.

moving for additional procedures in its Protest, the Sierra Club made no attempt to justify the need for such additional procedures or explain how its request met the requirements of the DOE's regulations. In any event, the motion for additional procedures in the footnote to the Sierra Club Protest pertains only to responding to opposition to the Sierra Club's Motion to Intervene and does not contemplate filing an answer to the substantive issues raised in this proceeding.[10]

Second, the Sierra Club's motion for additional procedures has already been denied by the operation of Section 590.302(c) which states that such a motion "shall be deemed to have been denied, unless the Assistant Secretary or presiding official acts within thirty (30) days after the motion is filed."[11] The Sierra Club Protest, containing the Sierra Club's motion for additional procedures, was filed on May 20, 2013. As more than thirty days have passed since May 20, 2013, the motion is deemed to have been denied. DOE/FE should reject the Sierra Club's belated and repetitive attempt here to resuscitate its earlier motion by the filing of its "renewed motion to reply."[12] The Sierra Club Reply adds nothing to the record and should be denied.

III.
ANSWER TO REPLY

Should DOE/FE accept the Sierra Club's improper motion and Reply, TLNG respectfully submits that it should be permitted to reply to the Sierra Club's continued mischaracterization of the record and of DOE/FE policy and precedent.[13]

[10] *Id.* (Referring only to its Motion to Intervene, the Sierra Club stated: "If any other party opposes this motion, we respectfully request leave to reply.").
[11] 10 C.F.R. § 590.302(c).
[12] Sierra Club Reply at 1.
[13] Section 590.302(b) of DOE's regulations provides "Any party may file an answer to any written motion within fifteen (15) days after the motion is filed." Accordingly, this Answer is timely filed and should be accepted.

A. The Sierra Club's Motion To Intervene Should Be Denied

As TLNG Export explained in its answer to the Sierra Club Protest, DOE/FE should deny the Sierra Club's Motion to Intervene because the Sierra Club failed to meet the standard for intervention outlined in Section 590.303(b) of the DOE's regulations. Pursuant to Section 590.303(b), a motion for intervene must set forth "clearly and concisely the facts upon which the petitioner's claim of interest is based."[14] The Sierra Club failed to set forth any facts specific to its interest in TLNG Export's application in particular. DOE/FE should deny the Sierra Club's improper attempt to rehabilitate its deficient Motion to Intervene through the filing of additional justification in its improper Reply.

B. The Sierra Club Has Failed To Overcome The Rebuttable Presumption That TLNG Export's Proposed Export Of Natural Gas Is In The Public Interest

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."[15] DOE/FE has clearly and consistently affirmed that Section 3(a) "creates a rebuttable presumption that a proposed export of natural gas is in the public interest."[16] 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."[17] The Sierra Club has not provided evidence sufficient to overcome this presumption. In fact, the Sierra Club has provided no evidence whatsoever specific to TLNG Export's proposal itself.

The Sierra Club now attempts to use this proceeding as a venue to argue its disapproval of the DOE/FE's actions in prior proceedings. The Sierra Club states that it is not trying to overturn the prior approvals but rather "seeks to persuade DOE/FE that its prior orders should

[14] 10 C.F.R. § 590.303(b).
[15] 15 U.S.C. § 717b(a).
[16] *See, e.g.*, *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, DOE/FE Order No. 3282 at 6 (May 17, 2013).
[17] *Id*.

not be followed."[18] The Sierra Club then goes on to list the evidence it provided in prior proceedings that the DOE/FE allegedly failed to consider.[19] The proper forum for disagreement with the DOE/FE's prior orders is on rehearing or appeal in those proceedings.

The Sierra Club cites to no authority for its assertion that the DOE/FE should drastically depart from its prior precedent and policy (announced most recently in the *Sabine* and *Freeport* orders) and change course with regard to analyzing TLNG Export's application. Despite the Sierra Club's urging to the contrary, an administrative agency is bound to act in a manner consistent with its prior precedent and must supply a "reasoned analysis"[20] that "prior policies and standards are being deliberately changed, not casually ignored."[21] DOE/FE should approve TLNG Export's application in a manner consistent with its prior precedent.

C. DOE/FE May Issue A Conditional Authorization Pending Environmental Review

The Sierra Club continues its attack on DOE/FE's ability to issue a conditional authorization pending FERC's completion of the environmental review process.[22] The Sierra Club continues to be wrong. As TLNG Export explained in its Answer to the Sierra Club Protest, the DOE's regulations specifically provide for conditional authorizations and DOE/FE has established a consistent precedent of issuing conditional authorizations pending environmental review by FERC.[23]

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[18] Sierra Club Reply at 3.
[19] *Id.*
[20] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983).
[21] *Ramaprakash v. FAA*, 346 F.3d 1121, 1124 (D.C. Cir. 2003), *quoting Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970).
[22] Sierra Club Reply at 4-5.
[23] *See, e.g.*, *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961 at 40-41 (May 20, 2011); *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, DOE/FE Order No. 3282 at 121 (May 17, 2013); *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).

The Sierra Club's concern that DOE/FE will not meet its "independent obligation" to consider the environmental impacts of the proposed export is unfounded.[24] DOE/FE recently affirmed the procedure for independently evaluating the environmental impacts of a proposed export following the completion of FERC's review under NEPA. In the Jordan Cove Energy Project, L.P. ("Jordan Cove") export application proceeding, Jordan Cove submitted a letter notifying DOE/FE that it had completed the mandatory NEPA pre-filing review process at FERC and that it had submitted its application to site, construct and operate the export facilities. DOE/FE stated that Jordan Cove's letter was "unnecessary because DOE is a cooperating agency in FERC Docket No. PF12-7-000 [the pre-filing docket] and, therefore, is aware of developments in the FERC proceeding."[25] DOE/FE further stated that it "intends to review the full record developed by the FERC . . . at a later date as part of this agency's *consideration of the environmental impacts of the application for an export authorization*."[26] Accordingly, the Sierra Club's concerns, as repeated yet again here in its procedurally improper Reply, are unfounded. DOE/FE may issue an order authorizing the proposed export in this proceeding, contingent on completion of the FERC NEPA process and DOE/FE's subsequent review of the environmental impacts of TLNG Export's proposal.

IV.
CONCLUSION

For the foregoing reasons, Trunkline LNG Export, LLC respectfully requests that DOE/FE (i) deny the Sierra Club's Renewed Motion to Reply and Reply and (ii) find that granting the remaining non-FTA authorization requested in TLNG Export's January 9, 2013 Application to enable TLNG Export to export domestically produced LNG from the Lake

[24] Sierra Club Reply at 5.
[25] DOE/FE Letter to Jordan Cove Energy Project, L.P., FE Docket No. 12-32-LNG (May 30, 2013).
[26] *Id*. at 1-2 (emphasis added).

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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Dated: July 3, 2013

VERIFICATION

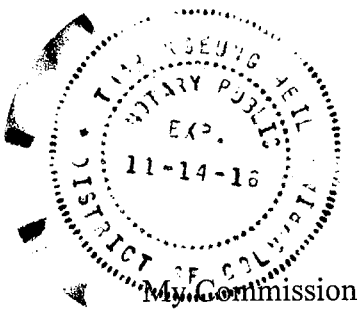
Washington, D.C.)

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.

James F. Moriarty

SWORN TO AND SUBSCRIBED before me on the 2nd day of July, 2013.

Name: Thar Roeung Heil
Title: Notary Public



My commission expires:

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

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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 3rd day of July, 2013.

/s/ James F. Moriarty
James F. Moriarty