



the renaissance in American manufacturing made possible by our country's new abundant and affordable supplies of natural gas, which have created more than 500,000 jobs in the United States since 2010.

AEA's member companies directly employ nearly 200,000 people worldwide, and its members are active purchasers of natural gas who use natural gas and natural gas liquids to provide indispensable services to all segments of American society. These services include supplying energy to consumers, producing vital commodities such as steel and aluminum, and manufacturing chemicals, plastics, and other products essential to national commerce. Accordingly, AEA and its members have substantial interests in U.S. distribution and sale of natural gas.

### **BACKGROUND**

FLEX commenced this proceeding on December 19, 2011. The deadline for comments and motions to intervene was April 13, 2012. At that time, only six applications to export LNG to non-FTA countries had been announced in the Federal Register by the Office of Fossil Energy of the Department of Energy ("DOE"), proposing total LNG export volumes of 8.31 Bcf/d (approximately 12% of total United States natural gas consumption in 2012), and DOE had approved only one application, which was filed by Sabine Pass Liquefaction, LLC ("Sabine Pass").<sup>1</sup> Since that time, the total number of applications to export LNG to non-FTA countries submitted to DOE has ballooned to 24, proposing LNG export volumes totaling 32.18 Bcf/d (approximately 46% of total United States natural gas consumption in 2012)—an increase of nearly 390% in only 17 months.

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<sup>1</sup> DOE/FE Order No. 2961, *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG (May 20, 2011).

Concerns regarding the cumulative effects of LNG exports initially caused DOE to suspend its review of all pending applications, including FLEX's current application, while it commissioned, and the public commented on, a report by the U.S. Energy Information Agency and a report by NERA Economic Consulting (the "NERA Report").<sup>2</sup> Recently, though, DOE has approved three more applications to export LNG to non-FTA countries. The applications were filed by FLEX (its first application), Lake Charles Exports, LLC ("Lake Charles"), and Dominion Cove Point LNG, LP ("Dominion Cove").<sup>3</sup> DOE approved these applications within four months of each other, all the while acknowledging that LNG exports are still "new phenomena with uncertain impacts" that warrant further review.<sup>4</sup> During this same period, two new applications to export LNG to non-FTA countries were submitted to DOE, bringing the total number of additional non-FTA LNG export applications under DOE review to 20 (including FLEX's current application).

It is in response to market developments since April 2012 and recent DOE orders that AEA moves to comment and intervene in this proceeding.

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<sup>2</sup> See generally Notice of Availability of 2012 LNG Export Study and Request for Comments, 77 Fed. Reg. 73627 (Dec. 11, 2012).

<sup>3</sup> DOE/FE Order No. 3282, *Freeport LNG Expansion, L.P. and FLNG Liquefaction LLC*, FE Docket No. 10-161-LNG (May 17, 2013) ("FLEX Order"); DOE/FE Order No. 3324, *Lake Charles Exports, LLC*, FE Docket No. 11-59-LNG (Aug. 7, 2013) ("Lake Charles Order"); DOE/FE Order 3331, *Dominion Cove Point LNG, LP*, FE Docket No. 11-128-LNG (Sept. 11, 2013) ("Dominion Cove Order").

<sup>4</sup> Lake Charles Order at 126; Dominion Cove Order at 143.

## MOTION TO COMMENT

### A. THERE IS GOOD CAUSE FOR DOE TO ACCEPT AEA'S COMMENTS

DOE's regulations provide that the deadline for submitting comments on FLEX's application can be extended "for good cause shown."<sup>5</sup> DOE has previously found "good cause" to accept comments out of time in LNG export proceedings where the commenter made a good faith effort to file its comments in a timely manner and no party will be prejudiced.<sup>6</sup>

Here, AEA's comments relate to the DOE decision-making process for review of LNG export applications as described and applied in connection with the FLEX Order, Lake Charles Order, and Dominion Cove Order. AEA's members believe that their interests and the interests of all constituencies affected by LNG exports would be better served if DOE establishes more particularized and informative standards for evaluating LNG export applications that can be consistently and reliably applied. AEA's members expected that DOE would develop such standards after suspending its review process to commission and accept comments on the NERA Report. AEA's members also expected that DOE would define the process by which it will periodically apply these standards to the reassessment and potential modification or rescission of existing export authorizations, as provided by the NGA.<sup>7</sup> Only upon DOE's issuance of the FLEX Order, Lake Charles Order, and Dominion Cove Order, which were entered on May 17,

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<sup>5</sup> 10 C.F.R. § 590.105(b); *see also* 10 C.F.R. § 590.310 (stating that DOE may grant parties additional time to request permission to file written comments "for good cause shown").

<sup>6</sup> *See* Procedural Order on Late-Filed Pleadings, *Sabine Pass Liquefaction, LLC*, FE Docket No. 10-111-LNG, at 4 (March 25, 2011) (accepting late-filed comment where "a good faith effort was made to file . . . in a timely manner" and "[n]o party is likely to have been prejudiced"); *see also* FLEX Order at 2 n.3 (accepting late-filed comment because doing so "will not prejudice other parties"); Lake Charles Order at 3 n.8 (same).

<sup>7</sup> *See* 15 U.S.C. § 717o ("The Commission [DOE] shall have power to perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter. . . .").

2013, August 7, 2013, and September 11, 2013, respectively, did it become apparent that AEA's comments would be required in this proceeding. Since issuance of DOE's orders, AEA has worked diligently and in good faith to collect and summarize the comments of its members.

Additionally, no party to this proceeding will be prejudiced by DOE accepting AEA's comments. AEA's comments do not take any position with respect to whether FLEX's application should be granted. AEA urges development of public interest criteria that will establish objective, comprehensive standards for reviewing and approving all LNG export applications, including that of FLEX, and an approach to reassessments of export authorizations in light of changed circumstances. Robust and clearly defined public interest criteria will enhance the reliability of DOE decision-making and reduce uncertainty in the LNG market about DOE's administration of the NGA, which would benefit all parties and affected constituencies.

Thus, there is good cause for DOE to accept AEA's comments, to which we now turn.

#### **B. DOE SHOULD ESTABLISH MORE APPROPRIATE AND RELIABLE STANDARDS FOR REVIEWING NATURAL GAS EXPORT APPLICATIONS**

The legal standards that DOE recently used to analyze the public interest in connection with the FLEX Order, the Lake Charles Order, and the Dominion Cove Order are not adequate, appropriate, or sustainable. In deciding to issue these orders, DOE relied on loose criteria that it adapted from guidelines promulgated for reviewing natural gas import applications in 1984—a time when public interest concerns relating to natural gas exports were nonexistent.<sup>8</sup> As DOE's orders acknowledge, these criteria do not address the unique and complex public interest

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<sup>8</sup> See generally *New Policy Guidelines and Delegation Orders From Secretary of Energy to Economic Regulatory Administration and Federal Energy Regulatory Commission Relating to the Regulation of Imported Natural Gas*, 49 Fed. Reg. 6684 (Feb. 22, 1984).

concerns associated with LNG exports, and are guided by DOE Delegation Order 0204-111 (Feb. 22, 1984), which is no longer in effect.<sup>9</sup>

The history of the NGA, including development of Delegation Order 0204-111, demonstrates that Congress intended to distinguish between natural gas imports and exports.<sup>10</sup> While importing natural gas involves the introduction of foreign resources to supplement the U.S. market, involving a straightforward dynamic of gas-on-gas competition in that market, exporting natural gas involves the depletion of a finite domestic resource for which there are limited, if any, alternatives. LNG exports thus raise a variety of unique economic, environmental, and other strategic concerns that cannot be adequately and specifically addressed by simply replacing the word “import” in the 1984 guidelines with the word “export.”<sup>11</sup> For example, LNG imports reduce price and availability risks to domestic consumers, while exports increase these risks. Accordingly, DOE needs to articulate relevant and reliable standards that are properly tailored to evaluating LNG export applications.

Compounding this problem, DOE’s standards for reviewing LNG export applications appear to be in flux. DOE’s most recent order—the Dominion Cove Order—relied on the fact

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<sup>9</sup> See FLEX Order at 7; Lake Charles Order at 7-8; Dominion Cove Order at 8.

<sup>10</sup> See generally *West Virginia Pub. Servs. Comm’n v. DOE*, 681 F.2d 847, 855 (D.C. Cir. 1982) (quoting H.R. 11662, 74th Cong., 2d Sess. § 3 (1936); S. 4480, 74th Cong., 2d Sess. § 3 (1936)) (noting that initial drafts of Section 3 of the Natural Gas Act extended regulations exclusively to exports of natural gas and highlighting the distinctions between the interests protected when regulating exports and those protected when regulating imports); see also 81 Cong. Rec. 9312-13 (1937) (recognizing that, in contrast to the purpose of regulating exports, the regulation of imports of gas “would not be [o]n behalf of the conservation of our gas supply”); Delegation Order 0204-111 (Feb. 22, 1984) (distinguishing between the factors to be considered when regulating exports of natural gas, as opposed to imports of natural gas).

<sup>11</sup> DOE also relied on Delegation Order No. 0204-111 in its orders. That Delegation Order, which is no longer in effect, was issued in conjunction with the 1984 guidelines for review of import applications, and likewise fails to address the distinctly different issues relevant to export proceedings in 2013 and beyond.

that the cumulative volume of LNG exports to non-FTA countries that DOE has authorized to date, which is 6.37 Bcf/d, “only moderately exceeds” the volume of LNG that the NERA Report evaluated in its “low” export scenario, which was 6.0 Bcf/d.<sup>12</sup> But DOE has not explained how its review will change with respect to FLEX’s application, which proposes to significantly exceed that threshold by an additional 1.4 Bcf/d, or other subsequent LNG export applications.

DOE’s recent orders also caution that “[t]he market of the future very likely will not resemble the market of today” and state that DOE intends to monitor changing conditions and the implications they may have on pending and future LNG export applications.<sup>13</sup> But DOE does not clarify what conditions it is monitoring or how those changing conditions could be expected to affect export applications. Similarly, DOE has reserved the right to attach new conditions to the authorizations that it has already granted to Sabine Pass, FLEX, Lake Charles, and Dominion Cove, and perhaps even rescind those authorizations, but has not identified the circumstances in which it might exercise this authority and the particular standards or processes that it would apply.<sup>14</sup> The absence of definitive standards for evaluation of LNG export applications creates uncertainty in the market for LNG, and sows confusion among the many interests affected by LNG trade.<sup>15</sup> DOE should provide more specific guidance regarding how future conditions may

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<sup>12</sup> Dominion Cove Order at 142. DOE did not account for the volume that it has already been authorized for exports to FTA countries or the additional volumes that would be lost in the process of converting natural gas to LNG.

<sup>13</sup> See Dominion Cove Order at 143.

<sup>14</sup> See FLEX Order at 112 n.126; Lake Charles Order at 125 n.169; Dominion Cove Order at 141 n.155.

<sup>15</sup> In an August 2, 2013 letter to U.S. Secretary of Energy Dr. Ernest Moniz, Senators Ron Wyden and Lisa Murkowski expressed concern over the lack of clarity with respect to DOE’s authority to modify or rescind prior authorizations for LNG exports. In addition, the American Petroleum Institute (“API”) recently sought to intervene out of time in the proceeding on the export application by Freeport-McMoRan Energy LLC to address DOE’s unprecedented reliance

affect the granting of an export authorization, or might cause an existing authorization to be modified or rescinded.

DOE's continued reliance on the flawed NERA Report is also a source of major concern given the economic impact of LNG export decisions. Among other flaws, the NERA Report (i) overstates the ability of the domestic supply of natural gas to match the growth in the domestic demand for natural gas with stable prices, (ii) gratuitously downplays or ignores the impact that short-term price volatility can have on major capital investment decisions by the manufacturing sector and others, and (iii) overstates any supposed net positive impact that LNG exports will have on employment and the trade balance. Even with all of these flaws, the NERA Report purports to identify only "very small net [positive] effects" to overall U.S. gross domestic product, with one sector of the U.S. economy receiving a windfall that is largely offset by disadvantages that are spread across other sectors of the economy.<sup>16</sup> In other words, the NERA Report conceded that rising LNG exports would harm the vast bulk of people in the United States. Finally, in what DOE recognizes is a rapidly changing environment, the NERA Report is already out of date.

In sum, it is not enough for DOE to summarily refer to the public interest, vaguely acknowledge that conditions may change, and imply that these changed conditions could possibly affect pending and future proceedings or retroactively affect previously granted authorizations. The development of an LNG export industry in the United States has widespread consequences affecting all segments of the American public interest, including the economy, the

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on final projections from the Energy Information Administration's Annual Energy Outlook 2013 in its assessment of factors relevant to the public interest. Because DOE has previously made only general references to its evolving analysis of the public interest based on developing information, interested parties like API were left without clarity as to what information DOE would consider relevant to its evolving analysis.

<sup>16</sup> NERA Report at 8-9.

environment, public policy, job creation, continued development of energy-intensive industries, international relations, and the quality of life for American citizens. DOE's influential role in this developing industry necessitates that it thoroughly consider what it has acknowledged to be the "inherent[] limit[at]ions]" of the predictive accuracy of the NERA Report, "the uncertain impacts" of the "new phenomena" of LNG exports, and the economic, technical, and regulatory developments that could rapidly alter the market for LNG.<sup>17</sup>

AEA believes 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. Notably, DOE's predecessor halted its review of natural gas import applications in the early 1980s to conduct a public conference process to reexamine natural gas import policy in response to evolving market conditions, and it is this process that culminated in the development of the 1984 guidelines for import applications on which DOE has relied.<sup>18</sup> But even if DOE declines to initiate a similar process to inform its review of LNG export applications, at the very least, DOE must elicit public comment and articulate standards that "consider adequately and fully all factors relevant to an intelligent determination of the overall public interest" as it relates to LNG exports.<sup>19</sup> Properly established, these standards could be consistently and reliably applied to all parties seeking authorization for LNG exports. Robust, well-defined public interest criteria will bring a level of economic and other analysis and transparency that is currently lacking.

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<sup>17</sup> Dominion Cove Order at 143.

<sup>18</sup> See generally *Panhandle Prods. & Royalty Owners Assn. v. ERA*, 822 F.2d 1105, 1107 (D.C. Cir. 1987) (citing 48 Fed. Reg. 34,501 (July 29, 1983); 47 Fed. Reg. 57,756 (Dec. 28, 1982)).

<sup>19</sup> See *Transcontinental Gas Pipeline Corp. v. Federal Power Comm.*, 488 F.2d 1325, 1328-30 (D.C. Cir. 1973) (reversing orders based on failure to conduct "a searching and comprehensive inquiry . . . into all factors relevant to determining the overall public interest").

## MOTION TO INTERVENE

Independent of its comment above, AEA seeks to intervene as a party in this proceeding. DOE's regulations permit intervention out of time "for good cause shown and after considering the impact of granting the late motion on the proceeding." 10 C.F.R. § 590.303(d). When "considering the impact" of granting prior motions to intervene out of time in LNG export proceedings, DOE has focused on whether other parties would be prejudiced.<sup>20</sup>

In addition to asking for the right to intervene on the current record, AEA is requesting admission as a party to preserve its ability to represent its members in the context of any future DOE rulings or decisions. This would include any changing conditions that may cause DOE to alter its findings about or later revisit and perhaps modify or even rescind its approval of, FLEX's current application. Given that DOE only recently indicated that it would consider such changing conditions with respect to the FLEX Order, Lake Charles Order, and Dominion Cove Order, there is good cause to allow AEA to intervene out of time on this basis alone.

Additionally, no party would be prejudiced by an intervention based on possible future activity because FLEX's application is still pending.

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<sup>20</sup> See DOE Response to Sierra Club's Motion to Intervene Out of Time, *Pangea LNG (North America) Holdings, LLC*, FE Docket No. 12-184-LNG (May 10, 2013). The Federal Energy Regulatory Commission, which administers other aspects of the Natural Gas Act, likewise focuses on potential prejudice when reviewing motions to intervene out of time in proceedings. See *Sabine Pass Liquefaction, LLC*, 139 FERC ¶ 61,039, at ¶ 61,148 (2012) (granting motions to intervene out of time where they did not "delay, disrupt, or unfairly prejudice any party to the proceeding"); *Tumalo Irrigation District*, 36 FERC ¶ 61,136, at ¶ 61,342 (1986) ("[S]ince we are still processing the application for Project No. 3470, granting Fuls intervention in that proceeding at this time would not disrupt that proceeding or cause prejudice to Tumalo").

**CONCLUSION**

Based on the foregoing, AEA respectfully requests that DOE grant its motions to (i) comment out of time and (ii) intervene out of time.

Dated: September 18, 2013

Respectfully submitted,



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UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

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FREEPORT LNG EXPANSION, L.P. )  
AND )  
FLNG LIQUEFACTION, LLC )  
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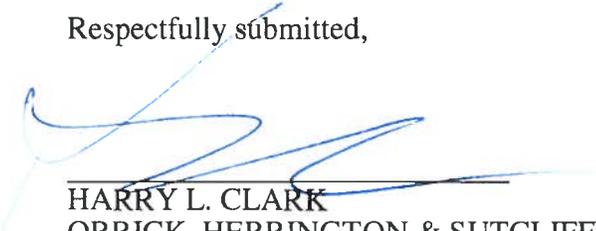
FE Docket No. 11-161-LNG

**CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE**

Pursuant to 10 C.F.R. § 590.103, I, Harry L. Clark, hereby certify that I am a duly authorized representative of America's Energy Advantage, Inc. ("AEA"), and that I am authorized to sign and file with the Office of Fossil Energy of the Department of Energy, on behalf of AEA, the foregoing document in connection with the above-captioned proceeding.

Dated: September 18, 2013

Respectfully submitted,

  
\_\_\_\_\_  
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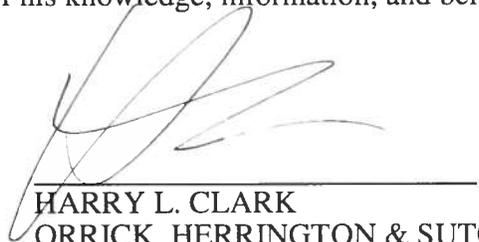
UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

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AND ) FE Docket No. 11-161-LNG  
FLNG LIQUEFACTION, LLC )  
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VERIFICATION

WASHINGTON §  
DISTRICT OF COLUMBIA §

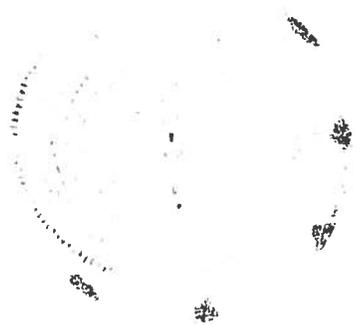
Pursuant to 10 C.F.R. § 590.103, Harry L. Clark, being duly sworn, affirms that he is authorized to execute this verification, that he has read the foregoing document, and that all facts stated therein are true and correct to the best of his knowledge, information, and belief.



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Subscribed and sworn to before me this 18th day of September, 2013.

  
Michelle Jordan  
Notary Public  
My commission expires: 4/30/16



UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

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FREEPORT LNG EXPANSION, L.P.  
AND  
FLNG LIQUEFACTION, LLC  
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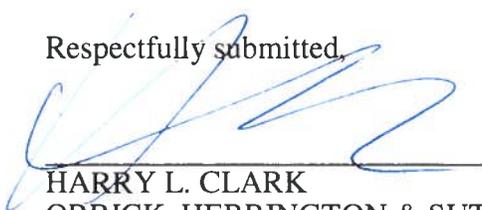
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**CERTIFICATE OF SERVICE**

I, Harry L. Clark, hereby certify that, in accordance with 10 C.F.R. § 590.107, I have this day served the foregoing document upon the Office of Fossil Energy of the Department of Energy, by electronic mail, for inclusion in the docket for the above-captioned proceeding, and upon all persons listed on the service list attached hereto as Exhibit A by electronic mail.

Dated: September 18, 2013

Respectfully submitted,



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**EXHIBIT A**

**OFFICE OF FOSSIL ENERGY  
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SERVICE LIST  
FE DOCKET NO: 11-161-LNG**

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