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

DOMINION COVE POINT LNG, LP

)
) FE Docket No. 11-128-LNG
)

**INDUSTRIAL ENERGY CONSUMERS OF AMERICA'S CONSOLIDATED
MOTIONS TO COMMENT AND INTERVENE OUT OF TIME**

Pursuant to 10 C.F.R. §§ 590.105(b) and 590.303(d), Industrial Energy Consumers of America ("IECA") hereby moves to (i) comment out of time and (ii) intervene out of time in the above-captioned proceeding on the application of Dominion Cove Point LNG, LP ("Dominion Cove") under section 3 of the Natural Gas Act ("NGA") (15 U.S.C. § 717b) for long-term authorization to export liquefied natural gas ("LNG") to countries with which the United States does not have a free trade agreement that provides for national treatment of trade in natural gas ("FTA"). In support of its motions, IECA states as follows:

COMMUNICATIONS

Any communications regarding this pleading or this proceeding should be addressed to:

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STATEMENT OF INTEREST

IECA is a nonpartisan association of leading manufacturing companies with \$1.3 trillion in annual sales, over 1,500 facilities nationwide, and with more than 1.7 million employees worldwide. It is an organization created to promote the interests of manufacturing companies through advocacy and collaboration for which the availability, use and cost of energy, power or feedstock play a significant role in their ability to compete in domestic and world markets.

IECA membership represents a diverse set of industries including: chemical, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, brewing, and cement. Further information about IECA is available at <http://www.ieca-us.org/>.

IECA's members are significant consumers of natural gas, natural gas liquids and electricity that is fueled by natural gas, to provide products that are consumed by every sector of the American economy. Many of these products that IECA companies produce are essential "building-block" products for U.S. economic growth. Producing these products in the United States creates high paying jobs and exports of high valued products. Accordingly, IECA and its members have a substantial interest in the U.S. domestic supply and price of natural gas.

BACKGROUND

Dominion Cove commenced this proceeding on October 3, 2011. The deadline for comments and motions to intervene was February 6, 2012. At that time, only five 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"), and DOE had approved only one application, which was filed by Sabine Pass Liquefaction, LLC ("Sabine Pass").¹ Since that time, the total number of applications to export LNG to non-FTA countries submitted to DOE has ballooned to 22.

Concerns regarding the cumulative effects of LNG exports initially caused DOE to suspend its review of all pending applications, including Dominion Cove's application, while it commissioned, and the public commented on, a report by NERA Economic Consulting (the

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

“NERA Report”).² Recently, though, DOE has approved two more applications to export LNG to non-FTA countries, which were filed by Freeport LNG Expansion, L.P. and FLNG Liquefaction LLC (together, “FLEX”), and Lake Charles Exports, LLC (“Lake Charles”).³ DOE approved these applications within twelve weeks of each other, all the while acknowledging that LNG exports are still “new phenomena with uncertain impacts.”⁴ It is in response to these recent orders that IECA moves to comment and intervene in this proceeding.

MOTION TO COMMENT

A. THERE IS GOOD CAUSE FOR DOE TO ACCEPT IECA’S COMMENTS

DOE’s regulations provide that the deadline for submitting comments on Dominion Cove’s application can be extended “for good cause shown.”⁵ 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.⁶

Here, IECA’s comments relate to the DOE decision-making process for review of LNG export applications as promulgated and applied in the FLEX Order and the Lake Charles Order. IECA’s members believe that their interests and the interests of all constituencies affected by

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

³ DOE Order No. 3282, *Freeport LNG Expansion, L.P. and FLNG Liquefaction LLC*, FE Docket No. 10-161-LNG (May 17, 2013) (“FLEX Order”); DOE Order No. 3324, *Lake Charles Exports, LLC*, FE Docket No. 11-59-LNG (Aug. 7, 2013) (“Lake Charles Order”).

⁴ Lake Charles Order at 126.

⁵ 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”).

⁶ 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).

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. IECA's members expected that DOE would develop such standards after suspending its review process to commission and accept comments on the NERA Report. Only upon DOE's issuance of the FLEX Order and Lake Charles Order, which were entered on May 17, 2013 and August 7, 2013, respectively, did it become apparent that that would not be the case, and that IECA's comments would be required. Although a month has passed since issuance of the Lake Charles Order, IECA has worked diligently and in good faith to collect and summarize the comments of its members as set forth herein.

Additionally, no party to this proceeding will be prejudiced by DOE accepting IECA's comments. IECA's comments do not take any position with respect to whether Dominion Cove's application should be granted. IECA urges development of public interest criteria that will establish objective, detailed standards for reviewing and approving LNG export applications. These new standards should apply to all outstanding applications, including that of Dominion Cove. Robust and clearly defined public interest criteria and other reforms 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 IECA'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 the FLEX Order and the Lake Charles Order are not adequate, appropriate, or sustainable. In both 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.⁷ As DOE’s orders acknowledge, these criteria do not address the unique and complex public interest concerns associated with LNG exports, and are guided by Delegation Order 0204-111 (Feb. 22, 1984), which is no longer in effect.⁸

The history of the NGA, including development of Delegation Order 0204-111, demonstrates that Congress intended to distinguish between natural gas imports and exports.⁹ While importing natural gas involves the introduction of foreign resources to supplement the domestic market, exporting natural gas involves the depletion of a finite domestic resource. 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

⁷ 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).

⁸ See FLEX Order at 7; Lake Charles Order at 7-8. Prior to the Sabine Pass Order, natural gas export applications that were approved by reference to the 1984 guidelines involved exports from Alaska. Since Alaska accounts for limited national gas consumption and for other reasons, Alaska LNG exports do not have anything approaching the impact on the domestic natural gas market that exports from the contiguous 48 states have. Consequently, the Alaska export cases present substantially different considerations than do applications for non-FTA exports from the contiguous 48 states. Moreover, prior orders approving exports from Alaska likewise failed to rigorously consider the differing public interest concerns between natural gas imports and exports. See DOE Order No. 1473, *Phillips Alaska Natural Gas Corp. & Marathon Oil Co.*, FE Docket No. 96-99-LNG, at 14 n.47 (Apr. 2, 1999) (citing DOE Order No. 350, *Yukon Pacific Corp.*, ERA Docket No. 87-68-LNG (Nov. 16, 1989) (asserting without support that “[w]hile th[e] 1984] guidelines deal with imports, the principles are applicable to exports as well”).

⁹ 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).

“import” in the 1984 guidelines with the word “export.”¹⁰ For example, LNG imports reduce price and availability risks to domestic consumers while exports increase these risks. Accordingly, DOE needs to articulate more precise 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 Lake Charles Order—relied on the fact that the cumulative volume of LNG exports to non-FTA countries that DOE has authorized to date remains below the volume of LNG that the NERA Report evaluated in its “low” export scenario, which was 6.0 Bcf/d.¹¹ But DOE has not explained how its review of LNG export applications will change once the cumulative volume of authorized exports crosses that threshold. This concern is particularly relevant to Dominion Cove’s application, which asks DOE to raise the cumulative volume of authorized non-FTA exports to 6.6 Bcf/d.¹²

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.¹³ But DOE does not clarify what conditions it is monitoring, and how those changing conditions could be expected to affect export applications. Similarly, DOE has reserved the right to attach new

¹⁰ 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 issues relevant to export proceedings.

¹¹ Lake Charles Order at 125-26. DOE did not account for the volume that it has already been authorized for exports to FTA countries.

¹² By granting Lake Charles’s application, DOE cumulatively authorized LNG exports to non-FTA countries totaling 5.6 Bcf/d. Lake Charles Order at 125. Dominion Cove’s application requests authority to export an additional 1 Bcf/d to non-FTA countries.

¹³ Lake Charles Order at 126.

conditions to the authorizations that it has already granted to Sabine Pass, FLEX, and Lake Charles, and perhaps even rescind those authorizations, but has not identified the circumstances in which it might exercise this authority and the particular standards that it would apply.¹⁴ 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.¹⁵ DOE should provide more specific guidance regarding how future conditions may affect the granting of an export license, or might cause an existing license to be rescinded.

DOE's continued reliance on a flawed NERA Report is also a source of major concern given the economic impact of LNG export license decisions. For example, the NERA Report used outdated data and made incorrect judgments about projected export levels, downplays or ignores the impact that short-term price volatility can have on major capital investment decisions by the manufacturing sector and others, and it overstates the supposed net positive impact that LNG exports will have on employment and the trade balance.

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

¹⁴ See FLEX Order at 112 n.126; Lake Charles Order at 125 n.169.

¹⁵ In an August 2, 2013 letter to Secretary Moniz, Senators Wyden and Murkowski expressed concern over the lack of clarity with respect to DOE's authority to modify or rescind prior approvals for LNG export. In addition, the American Petroleum Institute ("API") recently sought to intervene out of time in the proceeding on the application by Freeport-McMoRan Energy LLC to address DOE's unprecedented reliance 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 general references to its evolving analysis of the public interest based on developing information without clarifying exactly what developing information DOE expects to rely on, interested parties like API were left without clarity as to the information DOE would consider relevant to its evolving analysis.

consequences affecting all segments of the American public interest, including the economy, the environment, public policy, international relations and the quality of life for American citizens. DOE's influential role in this developing industry necessitates that DOE 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.¹⁶

IECA 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.¹⁷ But even if DOE declines to initiate a similar process to inform its review of LNG export applications, at the very least, DOE must 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.¹⁸ 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.

¹⁶ Lake Charles Order at 126.

¹⁷ 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)).

¹⁸ 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, IECA 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.¹⁹

In addition to asking for the right to intervene on the current record, IECA 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 even rescind approval of, Dominion Cove's application. Given that DOE only recently indicated that it would consider such changing conditions in the FLEX Order and the Lake Charles Order, there is good cause to allow IECA to intervene out of time on this basis alone.

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

CONCLUSION

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

¹⁹ 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").

Dated: September 10 2013

Respectfully submitted,



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UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

DOMINION COVE POINT LNG, LP

)
) FE Docket No. 11-128-LNG
)

CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE

Pursuant to 10 C.F.R. § 590.103, I, Paul N. Cicio, hereby certify that I am a duly authorized representative of Industrial Energy Consumers of America (“IECA”), and that I am authorized to sign and file with the Office of Fossil Energy of the Department of Energy, on behalf of IECA, the foregoing document in connection with the above-captioned proceeding.

Dated: September 10, 2013

Respectfully submitted,



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UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

DOMINION COVE POINT LNG, LP

FE Docket No. 11-128-LNG

VERIFICATION

WASHINGTON

§

DISTRICT OF COLUMBIA

§

§

Pursuant to 10 C.F.R. § 590.103, Paul N. Cicio, 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.

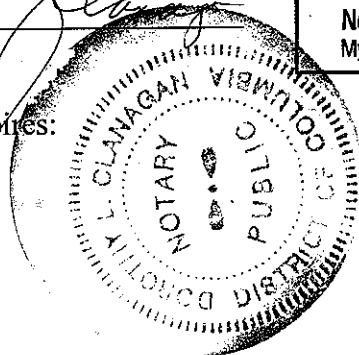
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Subscribed and sworn to before me this 10th day of September, 2013.

Dorothy L. Clanagan

Notary Public
My commission expires:



DOROTHY L. CLANAGAN
Notary Public, District of Columbia
My Commission Expires March 01, 2015

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

DOMINION COVE POINT LNG, LP

)
) FE Docket No. 11-128-LNG
)

CERTIFICATE OF SERVICE

I, Paul N. Cicio, 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 10, 2013

Respectfully submitted,



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EXHIBIT A

**OFFICE OF FOSSIL ENERGY
NATURAL GAS DIVISION
SERVICE LIST
FE DOCKET NO: 11-128-LNG**

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Intervenor(s):			
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4	The American Public Gas Association	David Schryver Executive Vice President The American Public Gas	(202) 464-0835 dschryver@apga.org

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