

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

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SABINE PASS LIQUEFACTION, LLC ) FE Docket Nos. 13-30-LNG & 13-42-LNG  
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**AMERICA’S ENERGY ADVANTAGE, INC.’S  
COMMENTS AND MOTION TO INTERVENE**

America’s Energy Advantage, Inc. (“AEA”) hereby submits its comments and, pursuant to 10 C.F.R. § 590.303, moves to intervene in the above-captioned proceedings on the second and third applications of Sabine Pass Liquefaction, LLC (“Sabine Pass”) 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 with regard to trade in natural gas (“FTA”).

**COMMUNICATIONS**

Communications regarding this pleading or these proceedings should be addressed to:

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**STATEMENT OF INTEREST**

AEA is a trade association representing many of the world’s leading manufacturers and commodity producers, as well as the United States’ publicly owned natural gas local distribution companies. AEA’s members provide thousands of products to American consumers and tens of thousands of high-wage jobs for American workers. AEA is dedicated to raising awareness of 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.

Sabine Pass's applications could affect those interests. Sabine Pass is requesting authorization to export another 0.52 Bcf/d of LNG produced from domestic resources over a term of 20 years, which is in addition to its existing authorization to export 2.2 Bcf/d of LNG.<sup>1</sup> Exporting additional LNG could materially affect the supply and pricing of natural gas available to American consumers and manufactures in the domestic market, particularly when Sabine Pass's request is viewed, as it must be, in conjunction with the four authorizations for LNG exports to non-FTA countries that the Office of Fossil Energy of the Department of Energy ("DOE") granted to Sabine Pass (its first application), Freeport LNG Expansion, L.P. and FLNG Liquefaction LLC (together, "FLEX"), Lake Charles Exports, LLC ("Lake Charles"), and Dominion Cove Point LNG, LP ("Dominion Cove"),<sup>2</sup> which approved total LNG export volumes

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

<sup>2</sup> See Sabine Pass Order; 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").

that already exceed the threshold that was evaluated as the “low” export scenario in the report that DOE commissioned from NERA Economic Consulting (the “NERA Report”).<sup>3</sup> AEA understands that the recipients of these authorizations already have commitments to export the approved volumes. Additionally, there are 19 other applications to export LNG to non-FTA countries under review by DOE. All told, the 25 applications for LNG exports to non-FTA countries that have been submitted to DOE so far propose LNG export volumes totaling 33.04 Bcf/d—equivalent to approximately 47% of total United States natural gas consumption in 2012.

AEA, as an association, is specifically dedicated to the interests of energy-intensive natural gas consumers and natural gas distributors, with particular concern for how those interests are affected by increased exportation of LNG. No other party to these proceedings can adequately represent the interests of AEA and its members.

#### **COMMENTS**

AEA’s comments relate to the DOE decision-making process for review of LNG export applications as described and applied in connection with the Sabine Pass Order, FLEX Order, Lake Charles Order, and Dominion Cove Order. The legal standards that DOE used to analyze the public interest in connection with those orders are not adequate, appropriate, or sustainable. AEA urges DOE to develop public interest criteria that will establish objective, comprehensive standards for reviewing all LNG export applications, including that of Sabine Pass, and define the process by which DOE will apply these standards to the evaluation and consideration of each pending and future application and to the reassessment and potential modification or rescission

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<sup>3</sup> See Dominion Cove Order at 142.

of existing export authorizations, as provided by the NGA.<sup>4</sup> 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.

In deciding to issue its prior 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>5</sup> 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 DOE Delegation Order 0204-111 (Feb. 22, 1984), which is no longer in effect.<sup>6</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>7</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,

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<sup>4</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. . . .”).

<sup>5</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).

<sup>6</sup> See FLEX Order at 7; Lake Charles Order at 7-8; Dominion Cove Order at 8.

<sup>7</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).

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>8</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 on a case by case basis.

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 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>9</sup> But DOE has not explained how its review will change with respect to 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.”<sup>10</sup> Indeed, multiple natural gas suppliers and prized market research organizations have significantly increased their forecasts for natural gas demand from the following areas: industrial, power generation, exports to Mexico, and transportation. Yet, while DOE’s orders state that DOE intends to monitor changing conditions and the implications

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<sup>8</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.

<sup>9</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>10</sup> See Dominion Cove Order at 143.

they may have on pending and future LNG export applications, they do not clarify what conditions DOE 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>11</sup> The absence of definitive standards for evaluation of LNG export applications raises concerns across the country among those who are dependent upon affordable natural gas. It creates uncertainty in the market for LNG, and sows confusion among the many interests affected by LNG trade, including raising questions about whether to invest in new, previously announced, or existing manufacturing facilities in the United States.<sup>12</sup> DOE should provide more specific guidance regarding how future conditions may 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) downplays or ignores the impact that

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<sup>11</sup> See FLEX Order at 112 n.126; Lake Charles Order at 125 n.169; Dominion Cove Order at 141 n.155.

<sup>12</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 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.

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>13</sup> According to the NERA Report, “it [LNG exports] raises energy costs and, in the process, depresses both real wages and the return on capital in all other industries.”<sup>14</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 environment, public policy, job creation, continued development of energy-intensive industries, international relations, and the quality of life for American citizens. DOE has an obligation to conduct a public interest determination on each application and included in that is the responsibility to protect the interests of the public; that is, to ensure that the few are not benefiting at the expense of the many. Each application approval results in new natural gas demand pressures for the domestic market with new price impacts that must be considered. DOE should thoroughly consider what it has acknowledged to be the “inherent[] limit[at]ions” of the

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<sup>13</sup> NERA Report at 8-9.

<sup>14</sup> NERA Report at 7.

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 LNG market, on domestic consumers and the U.S. economy in the short and long term.<sup>15</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>16</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>17</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.

### **MOTION TO INTERVENE**

In addition to its comments above, AEA seeks to intervene as a party in these proceedings. At this time, AEA is still developing its position on Sabine Pass’s applications. *Cf.*

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<sup>15</sup> Dominion Cove Order at 143.

<sup>16</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>17</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”).

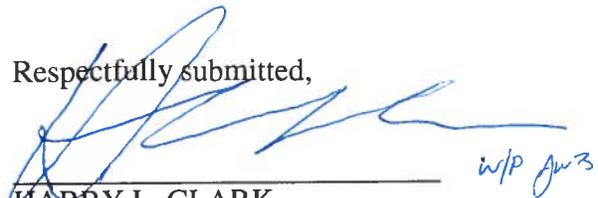
10 C.F.R. § 590.303(c) (requiring a movant to state its position “to the extent known”). As a general matter, AEA’s members support expanded trade and U.S. exports. AEA has questions, however, about the cumulative effect that LNG exports planned by Sabine Pass and other current and future LNG export applicants would have on the public interest, particularly given the absence of adequate standards to guide DOE’s review of whether requested LNG export authorizations are inconsistent with the public interest. AEA anticipates that it will submit a more detailed summary of its position on Sabine Pass’s applications at a later date. In the interim, AEA hereby reserves all of its rights.

**CONCLUSION**

Based on the foregoing, AEA respectfully requests that DOE (i) consider and address its comments and (ii) grant its motion to intervene.

Dated: September 23, 2013

Respectfully submitted,



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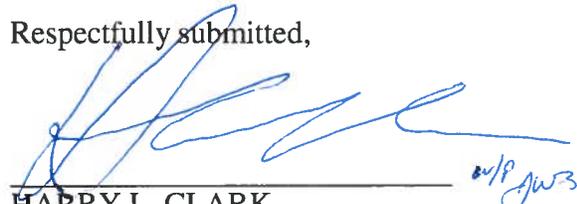
FE Docket Nos. 13-30-LNG & 13-42-LNG

**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 proceedings.

Dated: September 23, 2013

Respectfully submitted,



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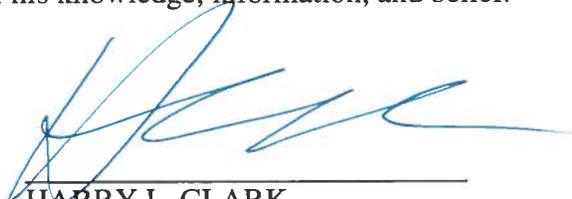
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VERIFICATION

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 20th day of September, 2013.

  
Michelle Jordan  
Notary Public  
My commission expires: 4/30/2016



UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY  
OFFICE OF FOSSIL ENERGY

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**CERTIFICATE OF SERVICE**

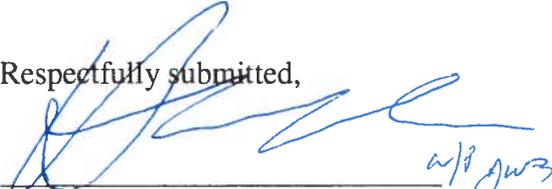
I, Harry L. Clark, hereby certify that, in accordance with 10 C.F.R. § 590.107, I have this day served the foregoing document upon the Office of Fossil Energy of the Department of Energy, by electronic mail, for inclusion in the docket for the above-captioned proceedings, and upon the following persons by electronic mail and U.S. mail:

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