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Sir/Madam,

Attached are Golden Pass Products LLC's Reply Comments regarding the 2012 LNG Export Study, prepared for filing with the Department of Energy/Office of Fossil Energy.

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**UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY/ OFFICE OF FOSSIL ENERGY**

| | | |
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| Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC, |) | FE Docket No. 10-161-LNG |
| Lake Charles Exports, LLC, |) | FE Docket No. 11-059-LNG |
| Dominion Cove Point LNG, LP, |) | FE Docket No. 11-128-LNG |
| Carib Energy (USA) LLC, |) | FE Docket No. 11-141-LNG |
| Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC, |) | FE Docket No. 11-161-LNG |
| Cameron LNG, LLC, |) | FE Docket No. 11-162-LNG |
| Gulf Coast LNG Export, LLC, |) | FE Docket No. 12-005-LNG |
| Jordan Cove Energy Project, L.P., |) | FE Docket No. 12-032-LNG |
| LNG Development Company, LLC (d/b/a Oregon LNG), |) | FE Docket No. 12-077-LNG |
| Cheniere Marketing, LLC, |) | FE Docket No. 12-097-LNG |
| Southern LNG Company, L.L.C., |) | FE Docket No. 12-100-LNG |
| Gulf LNG Liquefaction Company, LLC, |) | FE Docket No. 12-101-LNG |
| CE FLNG, LLC, |) | FE Docket No. 12-123-LNG |
| Excelerate Liquefaction Solutions I, LLC, and |) | FE Docket No. 12-146-LNG |
| Golden Pass Products LLC |) | FE Docket No. 12-156-LNG |

**REPLY COMMENTS OF GOLDEN PASS PRODUCTS LLC
REGARDING THE DOE 2012 LNG EXPORT STUDY**

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**REPLY COMMENTS OF GOLDEN PASS PRODUCTS LLC
REGARDING THE DOE 2012 LNG EXPORT STUDY**

Pursuant to the “Notice of Availability of 2012 LNG Export Study and Request for Comments” issued by the Office of Fossil Energy, Department of Energy (“DOE”) and published in the *Federal Register*,¹ Golden Pass Products LLC (“GPP”) submits the following Reply Comments to certain Initial Comments² on the “2012 LNG Export Study” commissioned by DOE to evaluate the cumulative economic impact of previously authorized and pending applications to export liquefied natural gas (“LNG”) to non-Free Trade Agreement nations

¹ *Freeport LNG Expansion, L.P., and FLNG Liquefaction, LLC. et al.*, FE Docket Nos. 10-161-LNG, et al., 77 Fed. Reg. 73627 (December 11, 2012) (“Notice of Availability of 2012 LNG Export Study and Request for Comments”).

² In view of the large number of initial comments, and the limited time period in which to respond, GPP responds in these Reply Comments to selected comments that present arguments that appear representative of those Initial Comments that were critical of the 2012 LNG Export Study.

("NFTAs").³

I. THE COMMENTERS OPPOSED TO LNG EXPORTS PRESENTED NO AFFIRMATIVE EVIDENCE, THEREBY FAILING TO MEET THEIR BURDEN OF PROOF UNDER THE NGA.

Section 3(a) of the Natural Gas Act,⁴ which applies to the proposed export of LNG to non-Free Trade Agreement nations, establishes a rebuttable presumption that a proposed export of natural gas is in the public interest, and DOE must grant an export application unless the export is found to be inconsistent with the public interest.⁵ Any opponents of an export application must make an affirmative showing of inconsistency with the public interest in order to overcome the rebuttable presumption favoring export applications.⁶

Numerous initial comments were submitted. However, the overwhelming majority consisted of form letters, many of which addressed issues outside of the scope of DOE 2012 LNG Study. Many of the remaining commenters critical of the Study tellingly provided no studies of their own purporting to evaluate the economic impact of authorizing the proposed LNG exports.⁷ For this reason alone, the records in the captioned proceedings all contain

³ "Macroeconomic Impacts of LNG Exports from the United States," NERA Economic Consulting, December 2012 ("NERA Study"); and "Effects of Increased Natural Gas Exports on Domestic Energy Markets, Energy Information Administration, January 2012) ("EIA Study").

⁴ ("NGA") 15 U.S.C. § 717b(a).

⁵ See, e.g., *Sabine Pass Liquefaction*, Order No. 2961, at 28; *Conoco Phillips Alaska Natural Gas Corp. & Marathon Oil Co.*, FE07-02- LNG, Order No. 2500, at 43 (June 3, 2008); *Phillips Alaska Natural Gas Corp. & Marathon Oil Co.*, 2 FE ¶ 70,317, at 13 (Order No. 1473) (1999); *Panhandle Producers and Royalty Owners Association v. ERA*, 822 F.2d 1105, 1111 (D.C.Cir. 1987)("PPROA"); *Independent Petroleum Association v. ERA*, 870 F.2d 168, 172 (5th Cir. 1989)

⁶ *Sabine Pass Liquefaction*, Order No. 2961, at 28 and n. 38; *ConocoPhillips*, Order No. 2500; *Phillips Alaska & Marathon*, Order No. 1473; *Panhandle Producers and Royalty Owners Assoc. v. ERA*, 822 F.2d 1105, 1111 (D.C. Cir. 1987).

⁷ The Sierra Club Initial Comments attach a "White Paper" prepared by Synapse Energy Economics, Inc. Although the White Paper is titled "Will LNG Exports Benefit the United States Economy?" it is in fact not an economic analysis of the impact of LNG exports on the U.S. economy. Instead, it is

(footnote continued on next page)

unrebutted evidence that the proposed exports are in the public interest under NGA Section 3(a),⁸ In addition, many of the criticisms leveled at the Study were based on flawed and implausible assumptions. The most significant of these flawed assumptions is that all authorized exports will in fact occur. Even as they level this criticism, the export opponents acknowledge its invalidity.⁹

Intervenors and commenters have not demonstrated that the proposed LNG export authorizations would be inconsistent with the public interest, as required under NGA Section 3(a) to deny an application for exports to NAFTA nations.¹⁰

A. NGA Section 3(a) Establishes A Statutory Presumption that the Proposed LNG Export Authorizations are Consistent with the Public Interest.

NGA Section 3(a) requires that the DOE "*shall* issue . . . [an export authorization order] upon application, *unless* . . . it finds that the proposed exportation or importation will not be consistent with the public interest."¹¹ Moreover, "[a] presumption favoring import authorization, then, is completely consistent with, if not mandated by, statutory

solely a rebuttal to the NERA Study. Every page of the Synapse White Paper is appropriately labeled "Analysis of NERA Report on LNG Exports." Even in its limited scope, the Synapse White Paper is conspicuously lacking in fact-based analysis. Instead, Synapse instead makes unsupported generalized assertions that purport to call the NERA Report's conclusions into question.

⁸ 15 U.S.C. § 717b(c). In the proceeding on GPP's NAFTA Application in Docket No. FE12-156-LNG, only the Sierra Club and APGA filed motions to intervene and protests. GPP intends to file an Answer to those pleadings on or before February 28, 2013, in accordance with DOE's February 14, 2013 Order in that proceeding.

⁹ See, e.g., Industrial Energy Consumers of America ("IECA") at 2: "We recognize that it is unlikely all proposed export facilities would be built."

¹⁰ *Sabine Pass Liquefaction, LLC*, FE Docket No. FE10-111-LNG (Order No. 2691), *on rehearing*, (Order No. 2961-A) (2012).

¹¹ 15 U.S.C. § 717b (emphasis added); *PPROA*, 822 F.2d 1105, 1108-10 (D.C.Cir. 1987)

directive."¹² Accordingly, DOE may rely on the presumption and place the burden on the opponent consistent with Section 3(a) of the NGA, "requir[ing] an affirmative showing of inconsistency with the public interest to *deny* an application."¹³

In evaluating an export application, the DOE focuses on

the domestic need for the gas; whether the proposed 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/FE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements.

Sabine Pass Liquefaction, Order No. 2961, at 29.¹⁴ The DOE "applies the principles described in the Secretary's natural gas import policy guidelines[,] which presume the normal functioning of the competitive market will benefit the public."¹⁵ Accordingly, the DOE examines whether the proposed exports will be conducted on a market-responsive, competitive basis.¹⁶ DOE gas import and export policies were "designed to establish natural gas trade on a market-competitive basis and to provide immediate as well as long-term benefits to the American

¹² *PPROA*, 822 F.2d at 1111 (citations omitted).

¹³ *PPROA*, 822 F.2d at 1111 (emphasis added); *Public Serv. Comm'n v. Economic Regulatory Admin.*, 777 F.2d 31, 35 (D.C.Cir. 1985), and *West Va. Pub. Servs. Comm'n v. U.S. Dep't of Energy*, 681 F.2d 847, 856 (D.C.Cir. 1982).

¹⁴ This approach is consistent with DOE Delegation Order No. 0204-1111, which previously guided DOE decisions on export applications but is no longer in effect. *Id.* See also, e.g., *ConocoPhillips Alaska*, Order No. 2500, at 44-45; *Phillips Alaska*, Order No. 1473, at 13-14.

¹⁵ *Phillips Alaska*, Order No. 1473, at 47 (citation omitted).

¹⁶ "New Policy Guidelines and Delegation Orders Relating to the Regulation of Natural Gas," 49 *Fed. Reg.* 6684-01 (Feb. 22, 1984) (hereinafter the "Policy Guidelines"). DOE has repeatedly reaffirmed the continued applicability of the guidelines and has consistently held that they apply equally to export applications (though written to apply to imports). *Yukon Pacific*, Order No. 350; *Phillips Alaska*, Order No. 1473; *ConocoPhillips Alaska*, Order No. 2500, *Sabine Pass*, Order No. 2961.

economy from this trade.”¹⁷ DOE also examines the potential effect of the export on domestic natural gas prices over the term of the exportation.

B. The Criticisms of the NERA Report and the Study Process are Without Merit.

I. Failure of Opponents to Present Contrary Affirmative Evidence.

As discussed above, both by its express wording and its interpretation in a long line of precedent, Section 3(a) establishes a presumption that an export of natural gas is in the public interest. It is therefore incumbent on parties that oppose an export to provide evidence indicating that the export is not in the public interest. As a review of the initial comments show, none of the commenters opposed to the export applications has carried that burden. At most, they have offered criticisms of the NERA Study.

Despite having ample opportunity to do so, the opponents presented no affirmative evidence to counter either the statutory presumption or the NERA report to demonstrate the proposed exports are contrary to the public interest. Instead, they have presented critiques of the NERA report based largely on speculation regarding potential price impacts and unsubstantiated assertions that gas exports will cause environmental harm. Policy disagreements, issues immaterial to the NGA Section 3(a) public interest presumption, and articulation of issues that are the subject of that presumption, instead of affirmative evidence rebutting the presumption, fail to establish that the proposed exports are not in the public interest.¹⁸

¹⁷ Policy Guidelines, at 6684.

¹⁸ *PPROA*, 822 F.2d at 1113-1114 *Cf. Walmsley v. Block*, 719 F.2. 414, 418 (8th Cir. 1983), *citing Ideal Farms, Inc. v. Benson*, 181 F. Supp. 62 (D. N.J. 1960), *aff'd*, 288 F.2d 608 (3d Cir. 1961) (reliance on technical argument on burden of proof not sufficient when opponents had ample opportunity to make their views known).

2. The Studies Solicited by DOE constitute Substantial Evidence in Support of a Finding that the Pending LNG Export Applications are Consistent with the Public Interest.

The DOE commissioned the EIA and NERA Studies to independently examine the impacts of the proposed LNG exports. As the agency with authority to grant or deny proposed exports of natural gas, the DOE is entitled to deference when exercising its expert judgment in analyzing and assessing the relative weight of competing arguments concerning the economic impacts of such exports.¹⁹ The scope of the examination undertaken by NERA and EIA at the DOE/FE's request provides ample data and analysis to show that the proposed exports are consistent with the public interest. Commenters opposed to the pending export applications have offered only unsubstantiated assertions to counter these studies.

Many studies have assessed the U.S. LNG export opportunity,²⁰ and the comprehensive NERA study once again confirms that it will be of net benefit to the U.S.²¹ Sufficient information

¹⁹ See, e.g., *Transmission Agency of N. Cal. v. FERC*, 628 F.3d 538, 551 (D.C.Cir. 2010) (affirming orders of the Federal Energy Regulatory Commission under the Federal Power Act to conditionally approve the proposal to create an Integrated Balancing Authority Area). "[W]hen specialists express conflicting views an agency must have discretion to rely on the reasonable opinions of its own qualified experts even if, as an original matter, a court might find contrary views more persuasive." *Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 378, (1989).

²⁰ Such studies include "The Socioeconomic Impact of Authorizing Exports of Liquefied Natural Gas from the Proposed Golden Pass Products LLC Facilities in Sabine Pass, Texas, on Business Activity in Jefferson County, the Surrounding Region, and the United States," The Perryman Group, August, 2012, and "Economic Impact of LNG Exports from the United States," Deloitte MarketPoint (2012), submitted by GPP in support of its NFTA Application. Additional studies include (1) Charles Ebinger, Kevin Massy, and Govinda Avasrala, *Liquid Markets: Assessing the Case for U.S. Exports of Liquefied Natural Gas* (Brookings Institution, May 2012); "Made in America: The economic impact of LNG Exports from the United States," by the Deloitte Center for Energy Solutions (2011 Deloitte Development LLC); and Massachusetts Institute of Technology, *The Future of Natural Gas* (2011).

²¹ The Sierra Club's purported need for the proprietary NERA model (Initial Comments at 14) is not even remotely comparable to the issues presented in *Electronic Privacy Info. Ctr. v. Dep't of Justice*, 416 F. Supp. 2d 30, 41-42 (D.D.C. 2006); *Washington Post v. Dep't of Homeland Security*, 459 F. Supp. 2d 61, 74-75 (D.D.C. 2006); *Electronic Frontier Found. v. Office of the Director*, 2007 WL 4208311, *6 (N.D. Cal. 2007); *EFF v. Office of the Director*, 542 F. Supp. 2d 1181, 1186 (N.D. Cal. 2008), involving Freedom

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is at hand for the DOE to promptly authorize LNG exports to NAFTA countries. Accordingly, the record shows that the proposed export applications meet the public interest standard in NGA Section 3(a). A few commenters dispute the substance of the NERA Report.²² However, their arguments conspicuously ignore the substantial evidence supporting authorization of the pending exports. Moreover, and as noted above, none of these comments presented data and analysis to substantiate the criticisms.

Several commenters²³ have criticized NERA's use of EIA *AEO 2011* data, claiming it does not account for increased demand subsequently projected in the *AEO 2013* forecast. For example, the Sierra Club contends that the DOE must prepare or commission a new study, with "full public participation," investigating additional so-called "fundamental" economic issues identified by the Sierra Club that it alleges "NERA entirely fail[ed] to consider."²⁴

DOE should reject these arguments. These commenters make a transparent attempt to (1) shift the burden of proof from itself to export applicants, contrary to the NGA; (2) create a presumptive nexus between LNG exports and increased hydraulic fracturing in the absence of

of Information Act ("FOIA") requests to the Office of the Director of National Intelligence ("ODNI") and the Department of Justice ("DOJ") to expedite the processing and release of records concerning efforts of ODNI and DOJ and the telecommunication industry to push for changes to federal surveillance law. The court's holding on motions for temporary injunction, that irreparable harm existed because Congress was considering legislation that would amend the surveillance law and the records may enable the public to participate meaningfully in the debate over such pending legislation.

²² Thus, for example, the Dow Chemical Company ("Dow") contends that the NERA Report does not provide an adequate basis upon which to determine whether LNG exports are in the public interest, and appears to oppose LNG exports generally. Dow at 2 ("Consequently, the NERA Report is not helpful in determining, and certainly should not be determinative of, the public interest with regard to increased LNG exports. More generally, the Report is not a reasonable basis for U.S. government policymaking or administrative action.")

²³ Sierra Club at 5; DOW at pp. 9-12; IECA at pp. 3, 8. In contrast, other domestic manufacturers, such as Caterpillar Inc., opposed artificial restrictions on LNG exports.

²⁴ Sierra Club at 5.

affirmative evidence; (3) require a redundant environmental review of hydraulic fracturing practices already subject to regulation and review by state and federal agencies; (4) use environmental review as a basis upon which to reject proposed exports, contrary to the intent and structure of the environmental laws; and (5) delay indefinitely the DOE's action on the pending application. At this stage, further study would not produce added insight but could result in significant cost. This is because the proposed U.S. LNG export projects are in competition with many aspiring LNG projects in other countries for limited market opportunities. In light of the potential benefits, the U.S. needs to pursue this opportunity while it still exists. Accordingly, the record shows that the proposed exports are in the public interest.²⁵

However, and contrary to the one-sided portrayal offered by the opponents of LNG exports, the *AEO 2013* also projects more elastic supplies, wherein higher U.S. production coincides with lower natural gas prices than in the *AEO 2011*. This growing supply elasticity would more easily accommodate demand from new LNG export projects. In short, one could expect LNG exports to have an even stronger net benefit for the U.S. if 2013 data were used. Thus, rather than supporting the Opponents' position, *AEO 2013* bolsters and enhances the NERA Study's findings.

DOE is not required to commission entirely new or updated studies to reflect the *AEO 2012* and *AEO 2013* projections. There has been no showing that those projections, or the facts on which they are based, materially alter the circumstances that formed the basis for the analysis in the NERA and EIA Studies. The mere fact that there are new data due to the passage

²⁵ *Vermont Yankee Nuclear Power Corp. v Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978).

of time is not a basis on which to require new studies:

"Administrative consideration of evidence . . . always creates a gap between the time the record is closed and the time the administrative decision is promulgated [and, we might add, the time the decision is judicially reviewed]. . . . If upon the coming down of the order litigants might demand rehearings as a matter of law because some new circumstance has arisen, some new trend has been observed, or some new fact discovered, there would be little hope that the administrative process could ever be consummated in an order that would not be subject to reopening."

Vermont Yankee, 435 U.S. 519, 554-555, quoting *ICC v. Jersey City*, 322 U.S. 503, 514 (1944).

3. Specific Criticisms of the NERA and EIA Studies are without merit.

Without supporting evidence, a small fraction of manufacturers and others have suggested that the opportunity cost in terms of domestic activity is greater than the expected benefits from LNG exports. This perspective fails to account for the overwhelming value generated in the upstream sector through incremental natural gas production and disregards numerous gas supply studies and forward projections that support the availability of substantial domestic gas supplies that can support the LNG exports.²⁶ As discussed in GPP's NFTA application, this development would involve significant investment in exploration and production activity and, as a result, considerable economic gains.²⁷

For example, the study by The Perryman Group Study ("TPG") included in GPP's NFTA Application study calculated approximately \$136 billion in direct and indirect gross economic gains resulting from increased gas production over the 25 year operating life. Additionally, the equivalent of more than 61,000 direct and indirect jobs in the U.S. would result from this

²⁶ Several of these studies are referenced below in these Reply Comments.

²⁷ GPP NFTA Application at pp. iv, 27, 29-31, 34

incremental production.²⁸ Even greater cumulative upstream benefits could be expected from the broader LNG export industry.

Moreover, LNG exports should generate a wave of new opportunities broadly across the manufacturing sector. For example, the TPG Study submitted by GPP identified approximately \$7 billion in gross product gains in the manufacturing sector arising from construction and operation of the GPP export facility.²⁹ In addition, production required to supply natural gas for LNG exports should generate incremental natural gas liquids (“NGLs”), which should in turn stimulate sizeable new petrochemical investments. Indeed, TPG projected that GPP would be a catalyst for \$3.7 billion in gross product gains from construction of new petrochemicals facilities, and \$4.8 billion annually during their operations.³⁰ Both manufacturing and petrochemical sectors should therefore benefit from the construction and operation of new LNG export facilities. Opponents nowhere present any data or analyses to contest the TPG study. Rather, and contrary to the burden of proof imposed on them by NGA Section 3(a), opponents make only generalized claims lacking in both data and analysis.

Significantly, other commenters representing chemical manufacturing interests agree with the conclusions of the NERA Study, contending that Federal policy should not place restrictions on LNG exports or on the production of domestic natural gas.³¹

Dow criticizes what it characterizes as NERA’s “failure . . . to consider what would happen if natural gas exports reached levels at or near the *authorized levels* under a ‘no

²⁸ TPG Study, at p. 31

²⁹ TPG Study, at p. 2.

³⁰ TPG Study, at pp. 35, 37.

³¹ The American Fuel & Petrochemical Manufacturers (“AFPM”) at p. 2; and The American Forest & Paper Association (“AF&PA”) at 2.

constraint' scenario. If exports were to reach such levels, then domestic natural gas prices undoubtedly would spike upwards, and any valid economic model would demonstrate as much."³² In other words, Dow contends that NERA should have analyzed the impact of LNG exports of 28 Bcf/d, the export quantity authorized to FTA countries, rather than NERA's own approach of analyzing the impact of projected actual export levels. Again, however, Dow presents no studies or data to support its position, relying instead on generalized claims that were such studies to be conducted, they "undoubtedly" would support Dow's assertions. That position ignores completely that Dow is required by NGA Section 3(a) to present contrary evidence.

These criticisms are anticipated and addressed in the NERA Study. NERA observes that "[i]n order to understand the economic impacts on the U.S. resulting from LNG exports, it is necessary to understand the circumstances under which U.S. natural gas producers will find it profitable to export LNG."³³ NERA examined 63 global scenarios, selecting 13 for detailed U.S. economic analysis. These 13 scenarios "spanned the full range of potential impacts" across all 63 scenarios, and "provided discrete points within that range for discussion."³⁴ None of NERA's scenarios involved LNG exports at aggregate annual levels even approaching the cumulative export levels for which LNG export authorization has been sought, based on its expert opinion on the range of scenarios that should be modeled in order to perform an impact analysis.³⁵ No

³² Dow at 21 (emphasis added).

³³ NERA Study at 37.

³⁴ NERA Study at 42.

³⁵ NERA Study at 40, Figure 23.

evidence has been submitted to challenge the reasonableness of the range of exports analyzed in the NERA Study.

Some commenters have suggested that for each unit of gas potentially exported, the DOE should consider the offsetting effects of an equal unit less of domestic consumption. This logic fails to comprehend the fundamentals of supply-demand, in particular the elasticity of supply as highlighted in numerous studies including the NERA Study and the Deloitte MarketPoint Study (“DMP Study”) submitted with GPP’s NFTA application. These studies found that domestic production would respond to incremental demand from LNG exports with modest effect on other users of gas.³⁶

4. NGA Section 3(a) Does Not Require DOE to Deny LNG Exports in the Hope of Stimulating a Domestic Compressed Natural Gas Vehicle Market.

CarbonX Energy Company, Inc. (“CarbonX”) contends that NGA Section 3(a) requires DOE to deny all LNG export applications in order to support the domestic compressed natural gas (“CNG”) vehicle market.³⁷ CarbonX’s argument amounts to an assertion of end-use priority. Instead of allowing markets to operate, which has been the foundation of policy under NGA Section 3 for thirty years, CarbonX contends that Section 3 requires that market forces be overridden in favor of nurturing the CNG vehicle industry. CarbonX submitted no studies or analysis concerning the viability of this use. Nor did it point to authority that specifically supports its arguments that DOE is required to deny export authorizations based on this consideration.

³⁶ NERA Study at 8, 66, 70; DMP Study, at 21-23, 36.

³⁷ CarbonX Initial Comments at 14 (contending that the asserted market for natural gas for CNG vehicles would absorb all of the projected increase in gas production over the study period).

CarbonX's reliance on *Maryland People's Counsel v. FERC*, 761 F.2d 780 (D.C. Cir. 1989), is misconceived. *MPC* repudiates CarbonX's argument. It stands for the principal that interstate pipelines must provide the same access to "special marketing programs" to captive end users that constituted the core market as they provided to "fuel-switchable end-users" The court rejected arguments that pipelines should limit access to those shippers that could leave their systems, finding that doing so was unduly discriminatory or preferential. The DOE's grant of authorization to export LNG does not restrict the CNG vehicle industry's access to domestically produced gas. LNG exports would allow market forces to allocate domestic production, consistent with long-standing Federal policy. Domestic consumers will have a built-in advantage, by virtue of the shipping costs of exporting LNG. They do not need the additional advantage of captive supply.

5. The Commenters opposing LNG exports have not demonstrated that exports will result in economic harm.

The Sierra Club mischaracterizes the analysis and conclusions in the NERA Report as supporting an argument that LNG exports will cost the United States jobs and harm wage-earners. These arguments reflect a misunderstanding of the NERA report in particular and economics generally. Moreover, this argument illustrates the inconsistency of the Sierra Club's positions. Sierra Club argues that it is economically preferable not to export natural gas due to the purported harms caused by unconventional production techniques. By logical extension, this is an argument for simply not producing any gas that would require unconventional production techniques.³⁸ (As discussed elsewhere in these Reply Comments, the export proceedings before DOE are not the appropriate forum for such an argument.) Thus, the Sierra

³⁸ See, e.g., Sierra Club at 14 n. 34.

Club's stated position would return the U.S. domestic gas supply picture to that of the mid-2000s, which led to the construction of new LNG *import* terminals and proposals in the United States.

C. DOE Must Reject Arguments That Are Contrary to the Explicit Wording of NGA Section 3(c).

The DOE must reject the arguments that the intent underlying Section 3(c) differs from its actual wording. Although the Notice requesting comments in this proceeding concerned the relevance of the NERA Report to pending applications for export to NFTA application, some commenters now contend that the DOE's previous authorizations of exports to FTA nations was contrary to Congressional intent. These arguments are contrary to the plain meaning of the NGA. NGA 3(c) states as follows:

(C) EXPEDITED APPLICATION AND APPROVAL PROCESS

For purposes of subsection (a) of this section, the importation of the natural gas referred to in subsection (b) of this section, **or the exportation of natural gas to a nation with which there is in effect a free trade agreement** requiring national treatment for trade in natural gas, **shall** be deemed to be consistent with the public interest, and applications for such importation **or exportation** shall be granted without modification or delay.

15 U.S.C. § 717b(c) (emphasis added). Notwithstanding the clear, unambiguous wording of this provision, Sierra Club contends “[t]his provision was intended to speed *imports* of natural gas from Canada. Congress never understood it to allow automatic licenses for export. That DOE has nonetheless issued export licenses under it, **without raising the issue for Congressional correction**, is itself an arbitrary and dangerous decision, inconsistent with Congressional intent.” Sierra Club Initial Comments at 3 (emphasis added).

When a statutory provision is unambiguous, as is plainly the case here, any question of

statutory intent should be resolved under the familiar Step One of a *Chevron* analysis.³⁹ Contrary to the contention of the Sierra Club (at 3), which is based on a white paper prepared by the Sierra Club,⁴⁰ *Chevron* does not authorize, leave aside require, an agency to “raise” or otherwise request “Congressional correction” of an unambiguously worded statute. The DOE has no authority to withhold authorizations mandated by the NGA.

II. COMMENTS REGARDING HYDRAULIC FRACTURING ARE OUTSIDE OF THE SCOPE OF THE 2012 DOE LNG EXPORT STUDY.

The National Environmental Policy Act of 1969⁴¹ requires federal agencies such as the DOE to examine and report on the environmental consequences of their actions. NEPA is an “essentially procedural” statute intended to ensure “fully informed and well considered” decision-making.⁴² NEPA established the Council on Environmental Quality (“CEQ”) “with authority to issue regulations interpreting it.”⁴³ The CEQ has defined major federal actions to include actions with “[i]ndirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.”⁴⁴

³⁹ *Chevron U.S.A. v. Natural Res. Def. Council*, 467 U.S. 837, 842-843 (“If the intent of Congress is clear, that is the end of the matter, for the court as well as the agency, must give effect to the unambiguously expressed intent of Congress.”).

⁴⁰ C. Segall, *Look Before the LNG Leap*, Sierra Club White Paper (2012) at pp. 40-41. Sierra Club (at 3) states that this white paper is “attached” as “Exhibit I,” but it was not posted with Sierra Club’s Initial Comments. The White Paper bases its position that Congress did not intend to include LNG exports in Section 3(c) entirely on the press releases of three members of the House of Representatives. In fact, none of those press releases contradicts the applicability of Section 3(c) to exports.

⁴¹ (“NEPA”), 42 U.S.C. § 4321 et seq.,

⁴² *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 558 (1978).

⁴³ *Dep’t of Transp. v. Public Citizen*, 541 U.S. 752, 757 (2004).

⁴⁴ 40 C.F.R. §§ 1508.8, 1508.18.

The Notice establishing the procedures for commenting on the Study explained in clear terms the purposes of the comment procedure, and the proper scope of the issues to be addressed in the comments. Nonetheless, some of the Initial Comments address issues unrelated to the Study, and further asserted that the limits on the comment procedure suggested that DOE would ignore other “critical, relevant issues” that the report supposedly “fails” to evaluate.⁴⁵ These parties further contend that “[a]ny authorizations to export LNG will directly and dramatically affect the shale gas development industry and its related supporting industries, and therefore must be analyzed as part and parcel of any credible LNG [exports] economic study, particularly one purporting to be a ‘cumulative impacts study.’”⁴⁶

However, the DOE and the Federal Energy Regulatory Commission (“FERC”) have already held that potential for induced shale gas development is neither a “reasonably foreseeable” result of LNG exports, nor an “effect” of LNG exports, for purposes of a “cumulative impacts analysis” within the meaning of the regulations of the CEQ.⁴⁷ An impact is “reasonably foreseeable” if it is “sufficiently likely to occur that a person of ordinary prudence would take it into account in reaching a decision.”⁴⁸

Contrary to the assertions of some commenters, DOE has stated that “it is fully aware of concerns over the environmental effects of shale gas production,” but has further found that “the existence of such concerns does not establish a causal connection capable of supporting

⁴⁵ See, e.g., Delaware Riverkeeper Network, et al. (“DRK”) at 2.

⁴⁶ *Id.* at 3

⁴⁷ 40 C.F.R. 1508.7 and 1508.8; *City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005).

⁴⁸ *City of Shoreacres v. Waterworth*, 420 F.3d 440, 453 (5th Cir. 2005); *Society Hill Towers Owners’ Ass’n v. Rendell*, 210 F.3d 168, 181 (3rd Cir. 2000); *City of Oxford v. FAA*, 428 F.3d 1346, 1353-54 (11th Cir. 2005); and *Border Power Plant Working Grp. v. Dep’t of Energy*, 260 F.Supp. 2d 997, 1027-28 (S.D. Cal. 2003).

meaningful analysis of the potential environmental impacts of whether or how the Liquefaction Project and the exports of natural gas from the Project will affect shale gas development.”⁴⁹ Consistent with its prior holdings, DOE must reject attempts to conflate a public interest determination related to LNG exports with environmental or economic review of hydraulic fracturing.

III. OPPONENTS IGNORE UNREFUTED EVIDENCE OF THE ADEQUACY OF SUPPLY.

Some commenters ignore the requirement that the DOE focus on need and supply security, contending instead that exports should be limited or prohibited altogether in order to provide natural gas supplies at artificially constrained prices.⁵⁰ These commenters contend, among other things, that the assurance of low gas prices would somehow nurture the recovery of certain industries (e.g., aluminum, chemicals, fertilizer and steel, among others).⁵¹ Some even go so far as to explicitly argue for “leveraging our domestic supply advantage to continue to improve our international competitiveness.”⁵²

In evaluating an export application, the DOE focuses principally on the domestic need for the gas and supply security:

the domestic need for the gas; whether the proposed 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/FE’s policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements.

⁴⁹ *Sabine Pass Liquefaction, LLC*, FE10-111-LNG, DOE Order No. 2961-A (Final Opinion And Order Granting Long-Term Authorization To Export Liquefied Natural Gas From Sabine Pass LNG Terminal To Non-Free Trade Agreement Nations) (2011) at 28.

⁵⁰ See, e.g., Rentech Inc.

⁵¹ See, e.g., Aluminum Association, at p. 2; Dow, at p. 34; and Rentech, at pp. 1-6.

⁵² Rentech Inc. at 1.

Sabine Pass Liquefaction, Order No. 2961, at 29.⁵³ The DOE “applies the principles described in the Secretary’s natural gas import policy guidelines[,] which presume the normal functioning of the competitive market will benefit the public.”⁵⁴ Accordingly, the DOE examines whether the proposed exports will be conducted on a market-responsive, competitive basis.⁵⁵ DOE gas import and export policies were “designed to establish natural gas trade on a market-competitive basis and to provide immediate as well as long-term benefits to the American economy from this trade.”⁵⁶

The U.S. has a vast and growing natural gas resource base, which can support current and future demand, including both robust new U.S. manufacturing growth and the new LNG export opportunities. In its NFTA application, GPP referenced the near doubling of U.S. natural gas resources from 2000 to 2010, and this upward trend continues.⁵⁷ Indeed, technological advances and new discoveries continue to add to the resource base.

As discussed above, the NERA Study analyzed the same 16 scenarios for LNG exports from the EIA Study.⁵⁸ These scenarios incorporated different assumptions about U.S. natural gas

⁵³ This approach is consistent with DOE Delegation Order No. 0204-111, which previously guided DOE decisions on export applications but is no longer in effect. *Id.* See also, e.g., *ConocoPhillips Alaska*, Order No. 2500, at 44-45; *Phillips Alaska*, Order No. 1473, at 13-14.

⁵⁴ *Phillips Alaska*, Order No. 1473, at 47 (citation omitted).

⁵⁵ “New Policy Guidelines and Delegation Orders Relating to the Regulation of Natural Gas,” 49 *Fed. Reg.* 6684-01 (Feb. 22, 1984) (hereinafter the “Policy Guidelines”). DOE has repeatedly reaffirmed the continued applicability of the guidelines and has consistently held that they apply equally to export applications (though written to apply to imports). *Sabine Pass Liquefaction*, Order No. 2961; *ConocoPhillips Alaska*, Order No. 2500; *Phillips Alaska*, Order No. 1473; and *Yukon Pacific*, Order No. 350.

⁵⁶ Policy Guidelines, at 6684.

⁵⁷ *AEO 2012*, 91 & 93, as referenced in GPP NFTA Application at p.18.

⁵⁸ NERA Study at 3-4, citing “Effect of Increased Natural Gas Exports on Domestic Energy Markets,” available at: www.eia.gov/analysis/requests/fe/.

supply and demand and different export levels as specified by DOE. NERA developed additional scenarios for global natural gas supply and demand, yielding a total of 63 scenarios when the global and U.S. scenarios were combined. The opponents do not contend, nor could they, that the pending exports present a legitimate concern with respect to domestic United States supply security.

IV. DOE IS NOT REQUIRED TO CONDUCT A RULEMAKING PROCEEDING.

Dow “see[s] no adequate procedural alternative to a full administrative proceeding by [DOE’s Office of Fossil Energy]. Only through that process, including public hearings, can the government establish the appropriate criteria for making the statutorily required public interest determinations for LNG export authorizations.” Dow, at 3. The decision to act by general rule or individual, ad hoc litigation lies primarily in the informed discretion of DOE.⁵⁹ It is well established that an agency may interpret its enabling statute on a case-by-case basis through the exercise of its adjudicatory function. An administrative agency such as DOE is equipped to act either by general rule or by individual order.

Dow fails to make a compelling case that DOE should exercise its discretion to conduct a rulemaking proceeding. Indeed, many of Dow’s arguments are premised on an assumption that wellhead prices are “reasonable,”⁶⁰ and that any action by DOE that could result in price increases is therefore contrary to the public interest. DOE should not make any determination,

⁵⁹ *ANR Pipeline Company v. FERC*, 870 F.2d 717, 722 (D.C.Cir. 1989)(rejecting contention that case-specific agency decision interpreting requirements of enabling statute required a rulemaking proceeding under the APA); See, e.g., *Kansas Gas & Elec. Co. v. FERC*, 758 F.2d 713, 719 (D.C. Cir. 1985) (it is “beyond dispute that an agency may articulate its general policy in a particular proceeding . . . rather than in a rulemaking”); *Securities & Exchange Commission v. Chenery*, 332 U.S. 194, 203 (1947)(“There is . . . a very definite place for the case-by-case evolution of statutory standards. And the choice made between proceeding by general rule or by individual, *ad hoc* litigation is one that lies primarily in the informed discretion of the administrative agency.”).

⁶⁰ Dow at 2, 5, 6, 8, 17, 31.

either through rulemaking or otherwise, that export authorizations should henceforth be guided by a target “reasonable” domestic gas price. Such a conscious policy would reverse nearly thirty years of import and export policy guided by principles of competition and unrestricted trade.⁶¹ Dow has not provided any rationale for the DOE to reconsider its import and export policies under Section 3(a).⁶²

Dow further contends that the rulemaking proceeding should be conducted as a fact-finding inquiry. This argument distorts the showing required under NGA Section 3(a). Section 3(a) does not require or empower DOE to suspend consideration of pending applications indefinitely while it conducts a factual inquiry into the potential effects of gas exports. Moreover, it does not require DOE to address every speculative, unsupported protectionist supposition an export opponent can conjure. As with the other commenters opposed to LNG exports, Dow did not provide any data or analysis to refute either the NERA Study or the economic impact studies filed by individual applicants.

⁶¹ The DOE 1984 Guidelines cited the problems created by foreign imported LNG, in combination with the wellhead price controls imposed under Title I of the Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301, et seq. (repealed), which at one time established 28 categories of gas with different “maximum lawful price” ceilings. The DOE found that these restrictions on the effects of supply and demand that otherwise would force competitive pricing and supply arrangements created the problems that led to the adoption of new policies “designed to establish natural gas trade on a market-competitive basis and to provide immediate as well as long-term benefits to the American economy from this trade.” *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 (1986).

⁶² Indeed, Dow sought and received authorization to *import* LNG to the Freeport LNG terminal under freely negotiated purchase and transportation contracts under the very policy it now urges the DOE to abandon. *The Dow Chemical Company*, Docket No. FE08-34-LNG (DOE Order No. 2494) (blanket two-year authorization for LNG imports); and Docket No. FE10-12-NG (Order No. 2754)(2010) (authorizing blanket two-year natural gas exports and imports to Canada and Mexico, as well as LNG imports); FE12-27-NG, Order No. 3083 (2012) (authorizing blanket two-year natural gas exports and imports to Canada and Mexico, as well as LNG imports). Furthermore, Freeport LNG Development’s pending long-term LNG export application (Docket No. FE11-161-LNG) identifies a wholly owned subsidiary of Dow as owning a 15% limited partnership interest in FLNG. That application is one of the pending applications in the caption to these Reply Comments.

V. OPPONENTS FAIL TO REFUTE NERA'S CONCLUSIONS THAT APPROVAL OF LNG EXPORTS WITHOUT ARTIFICIAL RESTRICTIONS COMPLIES WITH TRADE POLICY.

The DOE has held that in considering LNG export applications, it will be guided by DOE Delegation Order No. 0204-111.⁶³ Although this Delegation Order is no longer in effect, DOE has stated that its review of export applications in decisions under current delegated authority has continued to focus on, in addition to domestic need and supply security issues discussed above, “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.” The NERA Study did not advocate a specific trade policy to govern U.S. exports of LNG, although NERA premised its public interest analysis on an outcome that would accord with what economic theory describes when barriers to trade are removed.⁶⁴ The NERA Study concluded that LNG export would have net benefits to the U.S. economy.⁶⁵ DOE must recognize the implications of its actions on U.S. Trade Policy.

In its Application in Docket No. FE12-156-LNG (at pp. 27-28), GPP discussed the President’s March 11, 2010 National Export Initiative,⁶⁶ a five-year program aimed at reducing foreign barriers to trade. The Executive Order establishes an Export Promotion Cabinet, which includes the Secretary of the Department of Energy, to develop and coordinate the implementation of the NEI. The principal objectives of this initiative could be undermined by adoption of restrictive trade practices for U.S. exports.

⁶³ *Phillips Alaska Natural Gas Corporation and Marathon Oil Company*, 2 FE ¶ 70,317 (Order No. 1473).

⁶⁴ NERA Report at 7.

⁶⁵ *Id.* at 77-78.

⁶⁶ Executive Order No. 13524, 75 Fed. Reg. 12433 (March 16, 2010).

Several of the commenters that oppose LNG exports state that they generally supported free trade policies. For example, Dow states in its Initial Comments that “Dow supports expanded trade and U.S. exports and has a long tradition of playing a constructive role in assisting with U.S. government evaluation of international energy and trade policy matters.”⁶⁷ Dow points to data showing that its trade in “Basic Chemicals,” in which natural gas is a feedstock, has generated a considerable trade surplus, presumably benefitting Dow and others⁶⁸ However, Dow’s Initial Comments simultaneously endorse unspecified restrictions on LNG exports, to be determined based on a several factors that Dow itself acknowledges “do not necessarily lend themselves to economic or quantitative assessments.”⁶⁹

Although Dow appears to be advocating trade restrictions while at least acknowledging the value of Free Trade policies, IECA’s Initial Comments assert that “The heart of the issue is whether exporting LNG to “non-free trade” countries is in the public interest. ***These are countries that do not want free-trade and discriminate against manufacturing products produced in the United States.***”⁷⁰ IECA does not provide any support for its contention that

⁶⁷ Dow Initial Comments, at pp. 4, 42-43. Dow’s own Internet website similarly espouses free trade policies. http://www.dow.com/publicpolicy/global_policy/trade/. Dow’s web page titled “Perspectives on Trade in Europe” states as follows:

For European manufacturers like Dow who operate in global markets, an open trade agenda is essential. Open markets are especially crucial to the competitiveness of the EU chemicals industry, which delivers access to raw materials used in the manufacturing of chemicals, or feedstocks, and to new manufacturing customers and environments. Free trade policy also helps embed local companies in global production chains, making many local, small and medium-sized enterprises more competitive and creating quality jobs in Europe.

http://www.dow.com/publicpolicy/regional_advocacy/europe/trade.htm.

⁶⁸ Dow at 31-32.

⁶⁹ Dow at 41.

⁷⁰ IECA, at 2 (emphasis added).

the NFTA countries that could receive exports under the requested authorizations⁷¹ oppose free trade.

In evaluating the pending LNG export applications identified in the Notice of the Comment Procedure in the captioned proceedings, DOE must consider the implications of its decisions for United States foreign trade policies. Consistent with the 1984 Policy Guidelines, DOE should continue to base its decision-making on a market-competitive basis. As DOE stated in Opinion and Order No. 1473, “the public interest generally is best served by a free trade policy:

Such a policy promotes energy interdependence among all nations, rather than energy dependence on a few nations. Competition in world energy markets promotes the efficient development and consumption of energy resources, as well as lower prices, whereas economic distortions can arise from artificial barriers to the free flow of energy resources. Accordingly, the DOE believes that the public interest in free trade generally supports approval of proposed exports.

Phillips Alaska, 2 FE ¶ 70,317, at 51.

⁷¹ NFTA Countries that could receive LNG exports under the requested authorizations include a number of U.S. Trading partners, such as Japan, Germany, the United Kingdom, France and Taiwan. According to U.S. Census Department statistics, these countries are among the top eleven U.S. trading partners for goods in 2012. <http://www.census.gov/foreign-trade/statistics/highlights/top/top1212yr.html>

VI. SUMMARY AND CONCLUSION

As GPP stated in its Initial Comments, the NERA Report provides a thorough, comprehensive analysis of the cumulative impact of the pending and approved applications to export LNG to NFTA nations. The NERA Report convincingly shows that those export applications satisfy the standard set forth in NGA Section 3(a), and should be approved promptly. Many of the entities that filed Initial Comments expressed agreement with the conclusions reached by the NERA Study. As discussed above, some entities opposed to LNG exports criticized the NERA Study. However, these opponents did not provide analyses of their own, thereby failing to meet the burden of proof imposed on them under Section 3(a). Moreover, the LNG export opponents' criticisms of the NERA Study are either unfounded or outside the scope of issues relevant to the NERA Study or these proceedings. Accordingly, the record in the GPP Application proceeding, including the LNG Export Study and the comments submitted in response, as well as the studies provided by GPP in support of its proposed export, require DOE to promptly approve GPP's NFTA application.

WHEREFORE, for the reasons set forth above, GPP requests that DOE expeditiously grant the requested authorization in Docket No. FE12-156-LNG, based on the DOE 2012 LNG Study and the additional evidence filed with GPP's application.

Respectfully submitted,

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**Authorized Representative for
Golden Pass Products LLC**

STATE OF TEXAS)
)
)
)
HARRIS COUNTY)

SS:

**CERTIFIED STATEMENT AND VERIFICATION OF
AUTHORIZED REPRESENTATIVE**

Pursuant to Section 590.103(b) of the Department of Energy's (DOE) regulations, 10 C.F.R. § 590.303(e) (2012), William D. Collins, being first duly sworn on his oath deposes and says: that he is President of Golden Pass Products LLC; that that he is duly authorized to sign and file the foregoing Reply Comments in the captioned proceedings before the DOE; that he has read the Initial Comments; and that all of the statements and matters contained therein are true and correct to the best of his information, knowledge and belief.



William D. Collins
President
Golden Pass Products, LLC

Subscribed and sworn in Houston Texas,
on this 25th day of February, 2013.



Lauren W. Harrison, Notary Public

My commission expires: 08/17/2015

