UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

In The Matter Of:	**)**	
	)	
SABINE PASS LIQUEFACTION, LLC	**)**	**FE Docket No. 13 - ___ - LNG**
	)	

APPLICATION OF SABINE PASS LIQUEFACTION, LLC FOR LONG-TERM AUTHORIZATION TO EXPORT LIQUEFIED NATURAL GAS

Pursuant to Section 3 of the Natural Gas Act ("NGA")[1] and Part 590 of the Department of Energy's ("DOE") regulations,[2] Sabine Pass Liquefaction, LLC ("SPL") hereby requests that DOE, Office of Fossil Energy ("FE") grant long-term authorization for SPL to engage in exports of domestically produced natural gas in the form of liquefied natural gas ("LNG") in an amount up to 104,250,000 million British thermal units ("MMBtu") per year, which is the equivalent of approximately 101 billion standard cubic feet ("Bcf") of natural gas per year, pursuant to the terms of the LNG Sale and Purchase Agreement (FOB) ("SPA") between SPL as seller and Total Gas & Power North America, Inc. ("TGPNA") as buyer, dated December 14, 2012 ("TOTAL SPA"), which is submitted herewith as Appendix A. SPL is seeking such authorization for a 20-year period commencing the date of first export or eight years from the date of issuance of the authorization requested herein. In support hereof, SPL provides as follows:[3]

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1 15 U.S.C. § 717b (2006).

2 10 C.F.R. Part 590 (2012). This application (the "Application") is structured to conform to 10 C.F.R. Part 590 Subpart B—*Applications for Authorization to Import or Export Natural Gas*.

3 Additional materials in support of this Application may be found in the Appendices hereto.

10 C.F.R. § 590.202(a):

1. Exact legal name of applicant:

The exact legal name of the applicant is Sabine Pass Liquefaction, LLC. SPL has its principal place of business in Houston, Texas.

2. Service list contacts:

All correspondence and communications concerning this Application, including all service of pleadings and notices, should be directed to the following persons:[4]

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3. Statement of action sought from DOE/FE:

SPL hereby requests that DOE/FE grant long-term authorization for SPL to engage in exports of natural gas as LNG pursuant to the TOTAL SPA. As discussed below, under the TOTAL SPA, SPL will deliver LNG to TGPNA from the Liquefaction Project[5] for a primary term of 20 years, commencing on the date of first commercial delivery from the proposed fifth

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[4] SPL requests waiver of Section 590.202(a) of DOE's regulations, 10 C.F.R. § 590.202(a), to the extent necessary to include outside counsel on the official service list in this proceeding.

[5] The Liquefaction Project, consisting of four LNG production trains (*i.e.,* Trains 1, 2, 3 and 4), is being developed by SPL and its affiliate, Sabine Pass LNG, L.P. ("Sabine Pass LNG"), at the existing Sabine Pass LNG import, storage and vaporization terminal in Cameron Parish, Louisiana ("Sabine Pass LNG Terminal"). The Federal Energy Regulatory Commission ("Commission" or "FERC") authorized the construction and operation of the Liquefaction Project. *See Sabine Pass Liquefaction, LLC*, 139 FERC ¶ 61,039 (2012), *reh'g denied*, 140 FERC ¶ 61,076 (2012). To enable LNG sales to TGPNA under the TOTAL SPA, an expansion of the Liquefaction Project is required. To this end, concurrent with this Application, SPL is seeking authorization from the Commission to commence the pre-filing review process to add a fifth and sixth liquefaction train to the Liquefaction Project ("Liquefaction Expansion Project").

LNG production train at the Liquefaction Project.[6] SPL will deliver to TGPNA an annual contract quantity consisting of two components: an annual tranche of 91,250,000 MMBtu per year, and a seasonal tranche of 13,000,000 MMBtu per year,[7] which together are equivalent to approximately 101 Bcf of natural gas per year.

Specifically, SPL is seeking the issuance by DOE/FE of authorization to export up to 104,250,000 MMBtu per year of natural gas (or approximately 101 Bcf per year) as LNG from the Liquefaction Project to: (i) any nation that currently has or in the future develops the capacity to import LNG and with which the United States currently has, or in the future enters into, a free trade agreement ("FTA") requiring the national treatment for trade in natural gas and LNG (an "FTA Authorization");[8] and (ii) any other country with which trade is not prohibited by U.S. law or policy, and that has, or in the future develops, the capacity to import LNG (a "non-FTA Authorization"). SPL requests these authorizations for a 20-year term commencing the earlier of the date of first export or eight years from the date of issuance of the authorizations requested herein.

SPL respectfully requests that the DOE/FE issue the FTA Authorization without modification or delay in accordance with the applicable standard of review under Section 3(c) of

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[6] SPL's delivery obligations under its SPAs are not tied to individual trains. Instead, SPL's obligation to deliver LNG under its contracts becomes effective upon the date that specified trains become commercially operable, but SPL retains the flexibility to satisfy its delivery obligations with LNG from any train at its facility. In the case of the TOTAL SPA, the obligation to deliver LNG to TGPNA arises when the fifth train becomes commercially operable. SPL's other contracts, which have previously been submitted to DOE in compliance with 10 C.F.R. Part 590 and DOE/FE Order No. 2961, provide for a similar commencement of deliveries with respect to each of Trains 1-4. The cumulative amount of export authorization granted under Order No. 2961 is equal to the sum of the annual contract quantities of the SPAs previously submitted to DOE/FE, and the quantity requested pursuant to this Application is equal to the annual contract quantity of the TOTAL SPA.

[7] The annual tranche is equivalent to approximately 1.75 million tons per annum ("mtpa") or 88.3 Bcf per year, assuming a heating value of 1,033 Btu per standard cubic foot, and the seasonal tranche is equivalent to 0.25 mtpa or 12.6 Bcf per year, assuming the same heating value.

[8] Currently, the countries that have such FTAs with the United States include: Australia, Bahrain, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Chile, Morocco, Canada, Mexico, Oman, Peru, Singapore, Republic of Korea, Jordan, and Panama.

the NGA,[9] and the non-FTA Authorization as requested herein prior to March 31, 2014. In this regard, SPL requests that the non-FTA Authorization be issued as a conditional order, pursuant to Section 590.402 of the DOE regulations,[10] followed by issuance of a final order immediately upon completion of the environmental review of the Liquefaction Expansion Project by FERC.[11]

4. Justification for the action sought from DOE/FE, including why such action is not inconsistent with the public interest:

The granting of the authorizations requested herein is required pursuant to Section 3 of the NGA. SPL's request for FTA Authorization must be reviewed under Section 3(c) of the NGA, which provides that applications to export LNG from or to nations with which the United States has an FTA are deemed to be in the public interest and must be granted without modification or delay.[12] SPL's request for Non-FTA Authorization must be reviewed under Section 3(a) of the NGA, which provides that DOE/FE is required to authorize exports to a foreign country unless there is a finding that such exports "will not be consistent with the public interest."[13] Section 3(a) of the NGA states in relevant part:

> **(a) Mandatory authorization order**
> After six months from June 21, 1938, no person shall export any natural gas from the U.S. to a foreign country or import any natural gas from a foreign country without first having secured an order of

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9 15 U.S.C. § 717b(c).

10 10 C.F.R. § 590.402.

11 In promulgating its regulations setting forth the administrative procedures for the import and export of natural gas, DOE indicated that issuance of a conditional decision is appropriate when the application at issue involves, for example, the importation of LNG into new terminal facilities. *See Import and Export of Natural Gas*, 46 Fed. Reg. 44,696, 44,700 (Sept. 4, 1981). In such a case, DOE reviews the application to determine if the proposed importation is in the public interest based on the considerations within DOE's jurisdiction, while, concurrently, FERC must review other aspects of the proposed importation such as siting, construction and operation of the LNG receiving terminal facilities. *See id.*

12 *See Sabine Pass Liquefaction, LLC*, FE Docket No. 10-85-LNG, Order No. 2833 (Sept. 7, 2010); *Phibro LLC*, FE Docket No. 10-60-NG, Order No. 2803, at 2 (June 16, 2010); *Applied LNG Technologies USA, L.L.C.*, FE Docket No. 10-03-LNG, Order No. 2747, at 2 (Jan. 29, 2010).

13 15 U.S.C. § 717b(a).

> the Commission authorizing it to do so. The Commission shall issue such order upon application, unless, after opportunity for hearing, it finds that the proposed exportation or importation will not be consistent with the public interest.[14]

Section 3(a) thus creates a presumption in favor of approval of SPL's request for Non-FTA Authorization, which presumption opponents would bear the burden of overcoming. Even absent this presumption in favor of approval, there is ample evidence in the public record that exports of LNG, such as those requested by SPL in this Application, are in the public interest.

Moreover, in granting SPL's request for export authorization in Orders No. 2961 and 2961-A,[15] DOE/FE already has made a favorable public interest determination in the case of LNG exports from the Liquefaction Project. That determination, which is equally applicable here, was made on the basis of the very robust market studies and other evidence and comments that SPL submitted in that proceeding demonstrating the substantial economic and public benefits that are likely to follow from exports of natural gas as LNG. SPL incorporates herein by reference the substantial record that it developed demonstrating the public interest benefits of exports in FE Docket No. 10-111-LNG.[16]

Finally, SPL makes reference to the macroeconomic study commissioned by DOE and discussed in Appendix C hereto,[17] as well as to the multitude of letters from members of the

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14 *Id.*

15 *Sabine Pass Liquefaction, LLC, Opinion and Order Conditionally Granting Long-Term Authorization to Export Liquefied Natural Gas From Sabine Pass LNG Terminal to Non-Free Trade Agreement Nations*, DOE/FE Order No. 2961 (May 20, 2011); *Sabine Pass Liquefaction, LLC, Final Opinion and Order*, DOE/FE Order No. 2961-A (Aug. 7, 2012).

16 *See, e.g.*, *Sabine Pass Liquefaction, LLC,* Application for Long-Term Authorization to Export Liquefied Natural Gas 33–67, DOE/FE Docket No. 10-111-LNG (Sept. 7, 2010) (discussing how the Liquefaction Project would provide a market solution for further deliberate development of emerging sources of domestic natural gas, result in benefits to the public, and otherwise be in the public interest).

17 NERA Economic Consulting, *Macroeconomic Impacts of LNG Exports from the United States* (Dec. 3, 2012), *available at* http://www.fossil.energy.gov/programs/gasregulation/reports/nera_lng_report.pdf [hereinafter "NERA Study"].

United States Congress submitted in response to the NERA Study supporting approval of the export of domestic natural gas as LNG.[18] In sum, the abundant U.S. natural gas supplies and the overwhelmingly positive economic benefits of the Liquefaction Project and associated LNG exports, coupled with, as provided more fully below, the competitive pricing mechanism in the TOTAL SPA, unequivocally establish that SPL's proposal herein satisfies the public interest standard as set forth in DOE's Policy Guidelines.[19]

10 C.F.R. § 590.202(b):

1. Scope of the project, including volumes of natural gas involved, dates of commencement and completion of proposed export and facilities to be utilized or constructed:

Concurrent with this Application, SPL, and certain of its affiliates, are filing with the Commission—pursuant to the requirements of 18 C.F.R. § 157.21—a request to initiate the Commission's pre-filing review of the Liquefaction Expansion Project, consisting of a fifth and sixth liquefaction train totaling approximately 1.3 Bcf/d of natural gas liquefaction capacity, at the existing Sabine Pass LNG Terminal in Cameron Parish, Louisiana.[20]

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[18] *See, e.g.*, Ltr. from U.S. Sens. James M. Inhofe, Mary Landrieu, David Vitter, Mark Begich & Tom Coburn to Hon. Steven Chu, Sec'y, DOE (Feb. 20, 2013); Ltr. from U.S. Sen. Lisa Murkowski to Hon. Steven Chu, Sec'y, DOE (Jan. 25, 2013), *available at* http://www.fossil.energy.gov/programs/gasregulation/authorizations/export_study/Lisa_Murkowski01_24_13.pdf; Ltr. from U.S. Sen. John Cornyn to Hon. Steven Chu, Sec'y, DOE (Jan. 24, 2013), *available at* http://www.fossil.energy.gov/programs/gasregulation/authorizations/export_study/john_cornyn_Exec.pdf; Ltr. from U.S. Sen. James M. Inhofe to Hon. Steven Chu, Sec'y, DOE (Jan. 23, 2013), *available at* http://www.fossil.energy.gov/programs/gasregulation/authorizations/export_study/holland_luke_Inhofe01_01_23_13.pdf; Ltr. from U.S. Sen. David Vitter to Hon. Steven Chu, Sec'y, DOE (Jan. 23, 2013), *available at* http://www.fossil.energy.gov/programs/gasregulation/authorizations/export_study/Vitter.pdf; Ltr. from U.S. Sens. Mary L. Landrieu & Heidi Heitkamp to Hon. Steven Chu, Sec'y, DOE (Jan. 23, 2013), *available at* http://www.fossil.energy.gov/programs/gasregulation/authorizations/export_study/landrie.pdf; Ltr. from U.S. Rep. Charles W. Boustany, M.D., to Hon. Steven Chu, Sec'y, DOE (Jan. 16, 2013), *available at* http://www.fossil.energy.gov/programs/gasregulation/authorizations/export_study/Boustanyletter.pdf.

[19] *Policy Guidelines and Delegation Orders Relating to the Regulation of Imported Natural Gas*, 49 Fed. Reg. 6684 (Feb. 22, 1984) [hereinafter *Policy Guidelines*].

[20] The pre-filing request also includes a request by an affiliated interstate pipeline company, Cheniere Creole Trail Pipeline, L.P. ("CCTPL"), to initiate the pre-filing review process for a proposed extension and expansion of the existing Cheniere Creole Trail Pipeline system in order to deliver feed-gas to the Liquefaction Expansion Project.

The volume of natural gas to be exported and dates of commencement and completion of the proposed exports are set forth in the TOTAL SPA. Specifically, the TOTAL SPA provides for TGPNA to purchase the equivalent of approximately 101 Bcf of natural gas per year from SPL for a 20-year term commencing on the date of first commercial delivery from the fifth liquefaction train.

2. <u>Source and security of the natural gas supply to be exported:</u>

SPL will purchase natural gas to be used as fuel and feedstock for LNG production from the interstate and intrastate grid at points of interconnection with other pipelines and points of liquidity both upstream and downstream of the CCTPL system and other systems that interconnect with the Liquefaction Project. Through these pipelines' interconnections with various other interstate and intrastate pipeline systems, the Liquefaction Expansion Project will have access to virtually any point on the U.S. interstate pipeline system through direct delivery or by displacement.[21] The proximity of the Liquefaction Expansion Project to multiple interstate and intrastate pipelines will enable SPL to purchase natural gas from multiple conventional and unconventional basins located across the region, state, and virtually anywhere in the nation. This supply can be sourced in large volumes in the spot market, or pursued under long-term arrangements. To date, SPL has not entered into any natural gas purchase agreements for the purpose of supplying natural gas feedstock for the exports contemplated by the TOTAL SPA.

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[21] SPL has previously explained that the historically prolific Gulf Coast Texas and Louisiana onshore conventional gas fields, the gas fields in the Permian, Anadarko, and Hugoton basins, and the emerging unconventional gas fields in the Barnett, Haynesville, Eagle Ford, Fayetteville, Woodford, and Bossier basins represent the most likely sources of physical supply for LNG production at the Liquefaction Project. *See Sabine Pass Liquefaction, LLC*, Application for Long-Term Authorization to Export Liquefied Natural Gas 16, DOE/FE Docket No. 10-111-LNG (Sept. 7, 2010). Given the large size of the reserves in these fields and, in particular, the well-documented increase in production associated with the emerging unconventional resources, the proposed incremental exports are not anticipated to have any meaningful impact on the availability or pricing of domestic natural gas.

3. Identification of participants in the transaction, and affiliations:

SPL is an indirect subsidiary of Cheniere Energy Partners, L.P. ("Cheniere Partners"), a limited partnership majority owned by Cheniere Energy, Inc. ("Cheniere Energy"). Cheniere Partners is a Delaware limited partnership with its primary place of business in Houston, Texas, and Cheniere Energy is a Delaware corporation with its primary place of business in Houston, Texas. Cheniere Energy, both of its own accord and through Cheniere Partners, is a developer of LNG terminals and natural gas pipelines on the Gulf Coast, including the Sabine Pass LNG Terminal. SPL is authorized to do business in the States of Texas and Louisiana.

The parties to the TOTAL SPA are SPL and TGPNA. TGPNA is a Delaware corporation with a primary place of business in Houston, Texas. TGPNA is a wholly-owned indirect subsidiary of Total S.A., a multinational energy company based in Paris, France, with operations in numerous sectors, including oil and gas exploration, oil refining, electricity production and chemical manufacturing, among others.

There is no corporate or other affiliation between SPL and TGPNA.

4. Terms of the transaction:

The terms of the TOTAL SPA are entirely contained in the contract submitted herein as Appendix A. The price of LNG made available under the TOTAL SPA consists of a two-part rate: the first part reimburses SPL for the capital and operating costs of the facilities that will be constructed; and the second part reimburses SPL for the cost of fuel and feed gas purchased to satisfy loading nominations under the contract. The TOTAL SPA permits TGPNA to cancel nominated loadings with notice to SPL, thereby providing additional supply to the U.S. market in the event that natural gas prices increase above the net-back of world prices (considering shipping and delivery costs) as a result of reduced domestic production or above-normal demand.

The TOTAL SPA has a primary term of 20 years from the date of first commercial delivery from the fifth LNG train, and may be extended for an additional ten year term upon election by TGPNA, subject to SPL obtaining the necessary licenses and authorizations (including extended export authorizations) required to effect the extension. The remaining terms and conditions of the TOTAL SPA are substantially similar to other sales and purchase agreements in the industry.

5. Price adjustment mechanisms; competitiveness:

DOE issued its *Policy Guidelines* in 1984, delineating the criteria that DOE shall utilize in reviewing applications for natural gas imports;[22] the agency has applied these criteria in its review of applications for natural gas exports, as well.[23] The *Policy Guidelines* provide that the "policy cornerstone of the public interest standard is competition."[24] Competitive import/export arrangements are therefore an essential element of the public interest and, so long as the sales agreements are set in terms that are consistent with competitively-determined prices of domestic natural gas, they should be considered to "largely" meet the public interest standard.[25]

The TOTAL SPA's terms are consistent with competitively-determined prices. The second part of the two-part contract sales price (as described above) is indexed to the monthly Henry Hub price index, the widely accepted proxy for the wholesale price of natural gas in the U.S. If demand increases relative to available supply, the Henry Hub price will respond accordingly, and exports under the TOTAL SPA will automatically incorporate this price during the subject month. Since the decision to load or cancel will be made on the basis of the monthly

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22 *Policy Guidelines*, 49 Fed. Reg. at 6684.

23 *See Phillips Alaska Nat. Gas Corp. & Marathon Oil Co.*, DOE/FE Order No. 1473, at 14 (Apr. 2, 1999) (citing *Yukon Pac. Corp.*, DOE/FE Order No. 350, 1 FE ¶ 70,259, at ¶ 71,128 (1989)).

24 *Policy Guidelines*, 49 Fed. Reg. at 6687.

25 *See id.*

Henry Hub price, the export price would adjust continuously in response to aggregate supply and demand signals in the U.S.

6. Lack of national or regional need for the gas to be exported:

As discussed more fully in Appendix C, it is evident from the current and forecasted supply/demand balance of natural gas in the United States that the Application's request for authorization to export domestic natural gas production will not impinge on any national or regional need for the gas.[26] Furthermore, the TOTAL SPA is structured in such a way as to address changing market conditions in the unlikely eventuality of future excess demand.

7. Environmental impact:

The potential environmental impact of the Liquefaction Expansion Project will be reviewed by FERC as the lead agency in accordance with the Energy Policy Act of 2005, which amended the NGA to streamline the process for reviewing and approving natural gas projects, including LNG facilities.[27] It expressly provides FERC with lead agency status for the purposes of coordinating all applicable federal authorizations and complying with the National Environmental Policy Act ("NEPA").[28] Consistent with these statutes, it is anticipated that DOE/FE will participate as a cooperating agency in FERC's environmental review process for the Liquefaction Expansion Project. DOE/FE has adopted regulations of the Council on Environmental Quality ("CEQ") that govern its role as a cooperating agency in the NEPA process.[29] DOE's regulations provide that "DOE shall cooperate with the other agencies in

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[26] *See also See Sabine Pass Liquefaction, LLC*, Application for Long-Term Authorization to Export Liquefied Natural Gas 50–54, DOE/FE Docket No. 10-111-LNG (Sept. 7, 2010) (explaining that supply/demand balance demonstrates the lack of regional/national need).

[27] *See* Pub. L. No. 109-508, § 311(b), 119 Stat. 594, 686 (2005) (codified at 15 U.S.C. § 717b(e) (2006)).

[28] *See* 15 U.S.C. § 717n(b)(1) (2006).

[29] *See* 10 C.F.R. § 1021.103 (2012).

developing environmental information."[30] CEQ's regulations further provide for DOE/FE to adopt FERC's findings so long as FERC has satisfactorily addressed any comments raised by DOE/FE during the cooperating agency process.[31]

WHEREFORE, SPL respectfully requests that DOE/FE grant its request for authorization to engage in exports of domestically produced LNG from the Liquefaction Project pursuant to the terms and conditions of the TOTAL SPA to (i) any nation that currently has or in the future develops the capacity to import LNG and with which the United States currently has, or in the future enters into, an FTA requiring the national treatment for trade in natural gas and LNG; and (ii) any other country with which trade is not prohibited by U.S. law or policy, and that has, or in the future develops, the capacity to import LNG. SPL respectfully requests that the DOE/FE issue the FTA Authorization without modification or delay in accordance with the applicable standard of review, and the non-FTA Authorization as requested herein prior to March 31, 2014.

Respectfully submitted,

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Dated: February 27, 2013

30 *See id.* § 1021.342; *see also* 40 C.F.R. §§ 1501.6, 1508.5 (2012) (requiring that Federal agencies responsible for preparing NEPA analyses and documentation do so in cooperation with State and local governments and other agencies with jurisdiction by law or special, and providing that—upon request of the lead agency—any other Federal agency which has jurisdiction by law shall be a cooperating agency).

31 *See* 40 C.F.R. § 1506.3 (2012).