

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

In The Matter Of:)
)
Pieridae Energy (USA) Ltd.) **Docket No. 14-179-LNG**
)

**CONSOLIDATED ANSWER OF PIERIDAE ENERGY (USA) LTD. IN OPPOSITION
TO THE MOTIONS TO INTERVENE, THE PROTESTS, THE COMMENTS AND THE
REQUESTS FOR EXTENSION OF DEADLINE TO COMMENT AND INTERVENE
FILED BY VARIOUS ENTITIES**

Pursuant to Sections 590.302(b), 590.303(e) and 590.304(f) of the United States Department of Energy’s (“DOE”) regulations¹ (the “DOE Regulations”), Pieridae Energy (USA) Ltd. (“Pieridae US”), in its capacity as the general partner of Goldboro LNG Limited Partnership II, hereby submits this consolidated Answer in opposition to the motions to intervene that are identified in Appendix A (each a “Motion to Intervene” and collectively, the “Motions to Intervene”). Each such Motion to Intervene has been made by, or on behalf of, a person (each a “Filer” and collectively, the “Filers”) in these proceedings.

In support of this Answer, Pieridae US states the following:

¹ 10 C.F.R. Part 590 (2014).

I.
BACKGROUND

On October 24, 2014, Pieridae US filed an application (the “Application”) to the DOE’s Office of Fossil Energy (“DOE/FE”) requesting long-term, multi-contract authorization for Pieridae US to engage in exports of up to 292 billion cubic feet of natural gas per year (or approximately 0.8 billion cubic feet of natural gas per day) from the United States of America (the “United States”) to Canada for:

- (a) use as feedstock in a Canadian natural gas liquefaction facility, where the liquefied natural gas (“LNG”) produced from, such feedstock would be exported from Canada to one or more countries with which the United States has a Free Trade Agreement (“FTA”) requiring national treatment for trade in natural gas (collectively, the “FTA Countries” and each an “FTA Country”) and, thereafter, consumed in one or more FTA Countries;
- (b) use as feedstock in a Canadian natural gas liquefaction facility, where the LNG produced from such feedstock would be exported from Canada to one or more countries which do not qualify as FTA Countries, but with which trade is lawful (collectively, the “Non-FTA Countries” and each a “Non-FTA Country”) and consumed in one or more Non-FTA Countries; or
- (c) use in Canada as a source of energy in the production of electricity applied, in whole or in part, to operate a Canadian natural gas liquefaction facility and for other potential uses that constitute consumption in Canada for purposes other than as feedstock in the Canadian natural gas liquefaction facility for the production of LNG;

(collectively, the “Specified Purposes” and each a “Specified Purpose”)

for a term of twenty (20) years commencing on the earlier of (i) the date of first export; or (ii) seven (7) years from the date of issuance of the authorization requested thereby (the “Export Authorization”).

The Application was filed with the DOE/FE by Pieridae US pursuant to Section 3 of the Natural Gas Act² and on receipt by the DOE/FE was assigned reference number FE Docket No. 14-179-LNG.

The DOE/FE published notice of the Application in the Federal Register on December 10, 2014, establishing that the comment period for the Application would close at 4:30 p.m. Eastern time on February 9, 2015.

II. **OVERVIEW**

The vast majority of the Motions to Intervene must be rejected for failure to comply with the DOE/FE’s procedural regulations on either one or both of the following counts. First, Section 590.103(b) of the DOE Regulations requires in relevant part: “Documents signed by an authorized representative shall contain a certified statement that the representative is a duly authorized representative unless the representative has a certified statement already on file in the [DOE/FE] docket of the proceeding. All documents shall also be verified under oath or affirmation by the person filing, or by an officer or authorized representative of the firm having knowledge of the facts alleged.”³

² 15 U.S.C. § 717b (2012).

³ 10 C.F.R. § 590.103(b).

The particular Motions to Intervene which have been purportedly filed by a representative of an organization, but which fail to contain the required certified statement, are those identified in Appendix A as #1, #2, #3, #5, #12, #14, #16, #24, #25, #27 and #164.

The particular Motions to Intervene which fail to be verified under oath or affirmation are those identified in Appendix A as #1, #2, #3, #4, #5, #7, #9, #10, #11, #12, #13, #14, #15, #16, #17, #18, #20, #21, #22, #23, #24, #25, #27, #30, #31, #72, #164 and #165.

Without the required assurances of the bona fides of these filings and the accuracy of their contents, the DOE/FE does not have assurance that the filings represent the actual positions of the organization invoked or that the substance of the filings are accurate. As such, they must be rejected.

Second, while many of the filings allege the DOE/FE is failing to afford the Filers due process (particularly a lack of notice), the Filers fail to adhere to even the most basic tenant of due process with regard to their own actions. Section 590.103(b) of the DOE Regulations requires: “Each document filed with [DOE/FE] shall contain a certification that a copy has been served as required by § 590.107 and indicate the date of service.”⁴ In turn, Section 590.107 states, in relevant part: “(b) When the parties are not known, such as during the initial comment period following publication of the notice of application, service requirements under paragraph (a) of this section may be met by serving a copy of all documents on the applicant and on [DOE/FE] for inclusion in the [DOE/FE] docket in the proceeding.”⁵ Yet, a very large proportion of the Motions to Intervene were filed without service on Pieridae US or its duly

⁴ 10 C.F.R. § 590.103(b).

⁵ 10 C.F.R. § 590.107.

authorized representative,⁶ including those identified in Appendix A as #1, #2, #3, #4, #5, #7, #9, #10, #11, #12, #13, #14, #15, #16, #17, #18, #20, #21, #22, #23, #25, #30, #31, #72 and #165. As such, each of these Motions to Intervene must be rejected.

In addition, although each of the Motions to Intervene which are identified in Appendix A as #26 and #28 include a certificate of service, neither Pieridae US nor its legal representative have any record of having received such service of the Motions to Intervene.

With respect to the remaining filings that should be considered by the DOE/FE, they largely evidence a fundamental misunderstanding of the DOE/FE's statutory duties in the proceedings. In particular, as discussed in more detail with relevant citations in the Application (which Pieridae US will not repeat here), the DOE/FE must fulfill its statutory obligations with respect to two laws in acting upon the Application. First, it must make a public interest review under the Natural Gas Act ("NGA"). Second, it must make such public interest review in an informed manner to the extent required by the National Environmental Policy Act ("NEPA").

With regard to its NGA responsibilities, it must grant the Application unless it is presented with evidence demonstrating that the requested exports would be inconsistent with the public interest. Even if the DOE/FE were to ignore the fact that various entities failed to attest to the accuracy of their submissions, a review of the submissions reveals that no relevant facts have been submitted upon which the DOE/FE could reach a conclusion that the proposed exports would be contrary to the public interest. Indeed, the filings in these proceedings evidence a concern over the new construction or the expansion of natural gas pipeline facilities. Such concerns are not the province of the DOE/FE under the NGA. Responsibility under the NGA for

⁶ 10 C.F.R. § 590.107(d) (stating "Service upon a person's duly authorized representatives on the official service list shall constitute service upon that person".).

passing upon the public interest of siting and construction of natural gas infrastructure used in interstate commerce falls to the Federal Energy Regulatory Commission (“FERC”). To the extent that the Filers have any valid concerns with respect to such matters, they must take them to the FERC in conjunction with its proceedings regarding the specific physical facilities to which they object. For the DOE/FE to consider such matters would not only be outside its statutory purview but would also be an enormous waste of administrative resources given that the FERC will consider their issues if and when a specific pipeline facility is proposed.

With regard to its NEPA responsibilities, the DOE/FE is responsible for understanding the environmental consequences of any order issued with respect to the Application to the extent those consequences are both foreseeable and causally related to the DOE/FE’s action. It is abundantly clear, on the face of their filings, that the issues raised by the Filers neither constitute foreseeable consequences nor would be causally related to a grant of the Application. Among other things the Filers complain about a variety of pipelines and fail to point to any pipeline route or facility with sufficient specificity for the DOE/FE to engage in any meaningful review of the environmental consequences, even if such route or facility would be considered a result of its action. Moreover, the Filers fail to recognize that Pieridae US will be a pipeline capacity taker, not maker. Pieridae US has no control over any entity proposing to construct pipeline infrastructure in the US, nor does Pieridae US propose to build any such capacity itself. Further, Pieridae US is not contemplating receiving service through dedicated pipeline facilities within the United States. Instead, it will take capacity as it becomes available on whatever it views as the optimal facilities available to it on favorable terms. Those facilities will be driven by the decisions of the pipeline owners based on their view of the overall market for pipeline services in the region. The sizing, routing and timing of such facilities will all be determined by the pipeline

project sponsors based on their view of the market, which will no doubt include multiple customers. References to the limited existing markets are not relevant because the new facilities they build will account for market demand that cannot currently be served. As such, it is impossible to determine Pieridae US's share of the market. Finally, it is not clear at this time which pipelines will provide service to Pieridae US. Not only is it unknown which pipelines will exist, it is unknown at what point Pieridae US will buy its natural gas. The DOE/FE need only consider the scope of the FERC's NEPA review of newly proposed US-based LNG terminals to confirm that government actions that will lead to the development of additional LNG export facilities, and related LNG exports, do not automatically trigger a need to review the environmental impacts of new or expanded upstream pipeline facilities that may supply the natural gas that will be consumed by such facilities and exported as LNG.. (In such cases, Pieridae US is unaware of a single instance where the FERC has looked beyond the facilities (*i.e.*, the LNG terminal and new pipeline facilities constructed for the express purpose of connecting the LNG terminal to third-party owned and operated pipelines) proposed by the applicant in its proceedings to consider potential new or expanded upstream pipeline facilities.) Here, Pieridae is not proposing to build any facilities and, as such, there is simply no physical facilities for the DOE/FE to review. Any new or upgraded upstream U.S. pipeline facilities that Pieridae US may take advantage of will be reviewed by the FERC when they are proposed by the sponsor of such project. NEPA requires no more.

Given the generic nature of the issues raised by the Filers, which go to pipelines in the northeast generally and not to Pieridae US's proposed exports specifically. The Filers' submissions can fairly be viewed as an impermissible collateral attack on the DOE's generally

applicable regulations and procedures and even on the NGA's bifurcation of responsibilities between DOE and FERC. DOE should not entertain such an attack in these proceedings.

Pieridae US's more specific objections to particular filings are set forth below.

III. MOTIONS TO INTERVENE AND PROTEST

The DOE Regulations require that each petitioner "...who seeks to become a party to a proceeding shall file a motion to intervene which sets out clearly and concisely the facts upon which the petitioner's claim of interest is based"⁷ and further requires that "[a] motion to intervene shall state, to the extent known, the position taken by the movant and the factual and legal basis for such positions in order to advise the parties and the Assistant Secretary as to the specific issues of policy, fact, or law to be raised or controverted"⁸.

Each of the Motions to Intervene fail to adequately (1) set out clearly and concisely the facts upon which the Filer's claim of interest is based and (2) state the factual and legal basis for their respective positions.

For example, the Motion to Intervene filed on behalf of Northeast Energy Solutions ("NES"), which is identified in Appendix A as #29, states on page 2 at paragraph G that it "has interests that will be directly affected by the outcome of this proceeding" but NES fails to define in any meaningful way what those interests are or how the issuance of the Export Authorization requested by Pieridae US could possibly adversely affect those interests.

The Motions to Intervene filed on behalf of Berkshire Environmental Action Team, Inc. ("BEATI"), the Massachusetts Pipeline Awareness Network ("MPAN") and New Hampshire Pipeline Awareness Network ("NHPAN") which are identified in Appendix A as #24, #27 and

⁷ 10 C.F.R. § 590.303(b) (2014).

⁸ 10 C.F.R. § 590.303(c) (2014).

#164, respectively, are similarly defective. BEATI, MPAN and NHPAN each assert, in substantially identical words, that Pieridae US's plans to export natural gas from the United States as contemplated in the Application "would likely depend on the completion of the Kinder Morgan ... project and/or alternative plans by Spectra Energy". In support of this assertion, BEATI, MPAN and NHPAN each cite page 20 and Appendix E of the Application. The submissions made by Pieridae on page 20 of the Application describe the proposed LNG facility and related infrastructure that are to be constructed and sited in Nova Scotia, Canada and do not relate in any way to the plans of Pieridae US to export natural gas from the United States. Although Appendix E of the Application describes certain natural gas pipeline facility expansions proposed in the Northeastern sector of the United States, those descriptions (derived from information in the public domain) are to illustrate the fact that pipeline transportation companies are reacting to the increased demand for natural gas in the region, not to Pieridae US seeking the Export Authorization.

Moreover, the proposed natural gas pipeline facility expansions (including the Northeast Energy Direct ("NED") and Connecticut Express pipeline projects proposed by Tennessee Gas Pipeline Company, L.L.C.) have not been initiated by their respective proponents in order to accommodate Pieridae US and its plans to export natural gas from the United States. As of the date of this Answer, Pieridae US has not entered into any agreement, or given any commitment, to secure natural gas pipeline transportation capacity with any third party. Furthermore, Pieridae US does not control through ownership or contract any pipeline infrastructure company in the United States. Therefore, Pieridae US's need for pipeline capacity cannot be regarded as a contributing factor to the expected increase in pipeline infrastructure so as to require NEPA analysis.

Pieridae US intends to purchase, and receive delivery of, all of its natural gas from United States suppliers at only four possible delivery points. These delivery points are at Wright, New York, Dracut, Massachusetts, Ramapo, New York and Mahwah, New Jersey. Of these four possible delivery points, only Wright is situated on the Tennessee Gas Pipeline upstream of the NED and Connecticut Express expansions. It is quite possible, and indeed preferable for Pieridae US to purchase, and take delivery of, natural gas at Dracut, Massachusetts, which is downstream of the NED and Connecticut Express expansions, by participating in open seasons or obtaining capacity through other permissible means. If Dracut were stipulated as the delivery point in the natural gas supply agreement made between Pieridae US and each U.S. supplier, then the U.S. supplier (not Pieridae US) would be the entity obtaining capacity on upstream US pipelines (e.g., the Tennessee Gas Pipeline, the expansions proposed by the NED and Connecticut Express initiatives, or any other facilities of the suppliers choosing that are now or in the future become available to it).

Even if Pieridae US were to purchase, and take delivery of, some or all of its natural gas at Wright, New York, and consequently Pieridae US were considered to indirectly support the expansion of the Tennessee Gas Pipeline about which these Filers express concern, the DOE/FE should nevertheless conclude that the proposed expansion falls outside the scope of construction that must be accounted for in performing a NEPA review based on all of the reasons stated on pages 59 to 70 of the Application. In this regard, the decision of the Supreme Court of the United States of America in *Department of Transportation v. Public Citizen*⁹ is relevant. As the DOE/FE does not have authority to prevent or even affect, in any way, the proposed expansion of the Tennessee Gas Pipeline, the “but for” causation vaguely alluded to by these Filers “is

⁹ 541 U.S. 752 (2004)

insufficient to make [the DOE/FE] responsible for a particular effect under NEPA and the relevant regulations.”¹⁰ This is because NEPA requires a “reasonably close causal relationship” similar to proximate cause in tort law.¹¹ Even if Pieridae US purchased, and took delivery of, all of the natural gas at Wright, this action by Pieridae US cannot be reasonably regarded in the circumstances as the proximate cause of the proposed expansion of the Tennessee Gas Pipeline because such expansion is occurring to accommodate market demand; not to accommodate Pieridae US and its proposed plans under the Application.

NES, BEATI, MPAN and NHPAN also assert that the issuance of the Export Authorization requested by Pieridae US would contribute to higher New England gas prices than if the exports are not allowed. However, these Filers offer no evidence in support of their assertions. As is made clear in the Application, the extensive local natural gas reserves and increased production support the proposition that the relevant regional natural gas supply is adequate to meet both the domestic needs of the region and the demand for exported natural gas. Current estimates of the Marcellus reserve and current production rates indicate that the reserve would not be exhausted for another 26 to 93 years even if Pieridae US’s exports were 100% additive to the current production rate.

The Motion to Intervene filed by the Industrial Energy Consumers of America (“IECA”), identified in Appendix A as #28, asserts that the Application filed by Pieridae US is premature because it has not completed the required NEPA process for its proposed Project. However, in view of the fact that the LNG facility proposed by Pieridae US will be situated in Canada, rather than the United States, Pieridae US submits that the approval of its Application

¹⁰ *Dep’t of Transp.*, 541 U.S. at 767.

¹¹ *Id.* at 767.

by the DOE/FE should not have any significant environmental consequences in the United States and certainly none which are relevant under NEPA. Apart from this assertion, the balance of IECA's Motion to Intervene is a criticism of the DOE/FE not only on variety of procedural matters, but also on its analytical approach taken in exercising its statutory responsibilities. However, these criticisms do not relate to the merits of the Application filed by Pieridae US, and therefore, they should be disregarded by the DOE/FE for the purpose of evaluating the Application.

For the foregoing reasons, Pieridae US opposes the Motion to Intervene and protest filed by each of NES, BEATI, MPAN, NHPAN and IECA and the Motion to Suspend filed by IECA.

IV. **REQUEST FOR EXTENSION OF DEADLINE TO COMMENT AND INTERVENE**

Pieridae US also opposes the request made by BEATI and MPAN for an extension of the deadline to comment and intervene. The request for an extension is not supported by any rational argument on how the public interest would be served or any demonstration that the process applied by the DOE/FE for this Application was in any way prejudicial to any person. Each Filer, including NES, BEATI, MPAN and NHPAN, filed on the last day of the sixty (60) day comment period and did not state why this period was inadequate or how an additional thirty (30) days would allow facts to emerge that would enhance the record. Moreover, each of NES, BEATI, MPAN and NHPAN confirm that it is an organization that represents various interests including electric and gas ratepayers, individuals who enjoy the land and waters of the region and those with energy, land, environmental, end-user and related economic interests. Accordingly, these Filers' comments and motions filed of record should be regarded by the

DOE/FE as being representative of the comments and motions that would have been made by like-minded persons if they had learned of this Application before the expiry of the deadline.

V. **OTHER MATTERS**

Pieridae US also opposes the assertion made by NES that the DOE/FE should suspend any further LNG export approvals to non-FTA Countries and that the DOE/FE should direct additional procedures concerning the Application. Pieridae US rejects the notion that there is insufficient information upon which the DOE/FE may rely in concluding that the export of natural gas to non-FTA Countries is in the public interest. In addition, Pieridae US rejects the suggestion made by NES that the Application is vague and non-committal by design because the pipeline expansion projects have yet to be finalized. Pieridae US has expended time and resources to provide the DOE/FE with comprehensive and accurate information in its Application and any uncertainties that may exist should not be regarded as impediments to the deliberations required of the DOE/FE in respect of this Application.

VI. **CONCLUSION**

For the foregoing reasons, Pieridae US respectfully reiterates its request to the DOE/FE for long-term, multi-contract authorization to engage in exports of up to 292 billion cubic feet of natural gas per year (or approximately 0.8 billion cubic feet of natural gas per day) from the United States to Canada for each of the Specified Purposes, provided that, with respect to LNG exported from Canada made with gas sourced in the United States, the sale or export of LNG to such country is not prohibited by any law or policy of the United States; with such authorization extending for a 20-year term commencing on the earlier of the date of first export or seven (7) years from the date of issuance of such authorization.

Respectfully submitted,



Erik J.A. Swenson

Islara U. Rodriguez

Attorneys for Pieridae Energy (USA) Ltd.

Dated: February 23, 2015

APPENDIX A

DOE/FE NO.	DATE:	FILED BY:	TYPE OF FILING:
1	2/9/2015	Rich Cowan for Dracut Pipeline Awareness Group	Motion to Intervene
2	2/9/2015	Jeff Zimmerman for Damascus Citizens for Sustainability, Inc.	Motion to Intervene
3	2/9/2015	Wes Gillingham, Program Director, for Catskill Mountainkeeper	Motion to Intervene
4	2/9/2015	Pramilla Malick	Motion to Intervene
5	2/9/2015	Nisha Swinton for Food & Water Watch	Motion to Intervene
7	2/9/2015	Barbara Clifford	Motion to Intervene
9	2/9/2015	Debby Lewis	Motion to Intervene
10	2/9/2015	Mark Pezzati	Motion to Intervene
11	2/9/2015	Julie Hawkowl	Motion to Intervene
12	2/9/2015	Karen Weber for Foundation for a Green Future, Inc.	Motion to Intervene
13	2/9/2015	Madeline Cronin	Motion to Intervene
14	2/9/2015	Ben Martin for 350CT	Motion to Intervene
15	2/9/2015	Julia Wernke	Motion to Intervene
16	2/9/2015	Eugene Marner for Compressor-Free Franklin	Motion to Intervene
17	2/9/2015	Sarah Partan	Motion to Intervene
18	2/9/2015	Andra Rose	Motion to Intervene
20	2/9/2015	Rebecca Roter	Motion to Intervene
21	2/9/2015	Karen Ribeiro Inner Fortune	Motion to Intervene
22	2/9/2015	Kathy McGhee	Motion to Intervene
23	2/9/2015	Vera Scroggins	Motion to Intervene
24	2/9/2015	Jane Winn for Berkshire Environmental Action Team	Motion to Intervene
25	2/9/2015	Joan Tubridy for Citizens Energy and Economics Council of	Motion to

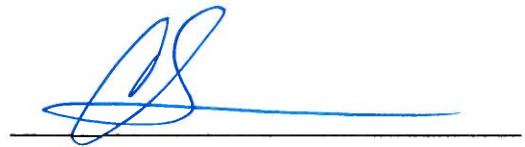
		Delaware County, NY	Intervene
26	2/9/2015	Johnson, Ty for Saint John Gas Marketing Co.	Motion to Intervene
27	2/9/2015	Katy Eiseman for Massachusetts PipeLine Awareness Network	Motion to Intervene
28	2/9/2015	Paul Cicio for Industrial Energy Consumers of America	Motion to Intervene
29	2/9/2015	Vincent DeVito, Esq. for Northeast Energy Solutions	Motion to Intervene
30	2/9/2015	Toby Woll	Motion to Intervene
31	2/9/2015	Andrea Doremus Cuetara	Motion to Intervene
72	2/9/2015	Judith Canepa	Motion to Intervene
164	2/9/2015	Marilyn Learner and Anne Diccico on behalf of New Hampshire Pipeline Awareness Network	Motion to Intervene
165	2/9/2015	Rebecca Roter on behalf of Breathe Easy Susquehanna County	Motion to Intervene

UNITED STATES OF AMERICA DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

VERIFICATION

Alfred Sorensen, first being sworn, states that he is president of Pieridae Energy (USA) Ltd. and that he is duly authorized to execute this Verification; that he has read the foregoing filing and is familiar with the contents thereof; and that all of the statements of fact therein contained are true and correct to the best of his knowledge and belief.



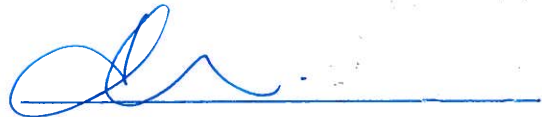
Alfred Sorensen

on behalf of

Pieridae Energy (USA) Ltd.

PROVINCE OF ALBERTA

Subscribed and sworn to before me on this 23rd day of February 2015, Alfred Sorensen proved to me on the basis of satisfactory evidence to be the person who appeared before me.



Jamie L. Gagner
Barrister & Solicitor

Certificate of Service

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 23rd day of February, 2015.

/s/ Maguette Fame
Maguette Fame
Paralegal on behalf of
Pieridae Energy (USA) Ltd