

requiring national treatment for trade in natural gas and with which trade is not prohibited by U.S. law or policy (“non-FTA countries”).¹

DOE/FE published a notice of American LNG’s non-FTA application on March 26, 2015 and established a deadline for the submission of motions to intervene, notices of intervention, requests for additional procedures, and written comments of May 26, 2015 at 4:30 pm Eastern time. In addition to the IECA Protest and the Clowdus Email, the American Petroleum Institute filed a timely motion to intervene raising no comments.

II. **PROCEDURAL MATTERS**

DOE/FE should deny IECA’s Motion to Intervene and exclude the Clowdus Email from the record. Although the IECA timely filed the IECA Protest, no representative of American LNG has received service of the IECA Protest despite the inclusion of a sworn Certificate of Service by IECA. American LNG is apparently not the first applicant that IECA has failed to serve.² The IECA has committed two offenses here: the failure to serve all parties in compliance with DOE/FE’s regulations and the submission of a false statement to the government. Absent a sanction, DOE/FE’s procedural regulations are meaningless. The appropriate sanction in this proceeding is denial of party status.

Ms. Clowdus filed her comments by email at 4:58 pm on May 26, 2015, approximately 28 minutes after the deadline. Although 28 minutes may seem like a small amount, there is no excuse for missing a deadline following a 60-day notice period, which is twice as long as DOE/FE’s regulations require, particularly when DOE/FE has provided an email address to make the submission of comments as easy as possible. Moreover, as demonstrated below, the

¹ American LNG also sought authorization to export LNG to FTA countries, which DOE/FE granted on March 18, 2015. *American LNG Marketing LLC*, DOE/FE Order No. 3601.

² See Answer of Venture Global LNG, LLC to Motions to Intervene and Protests, Docket No. 14-88-LNG, at 1, n.3 (Jan. 26, 2015).

Clowdus Email is replete with false statements that may have the effect of raising unwarranted concern rather than providing useful information. Including the Clowdus Email in the record will simply create public confusion with no offsetting benefit.

III. **ANSWER**

Even if the IECA Protest and the Clowdus Email were procedurally compliant, the arguments raised are entirely without merit and, in many cases, demonstrably false, and must be rejected. The IECA Protest is a carbon copy of pleadings that IECA has filed in other LNG export proceedings.³ The IECA's arguments underlying its opposition to exports and its motion to suspend the procedural schedule are wrong on the merits in all cases. In this proceeding, however, the IECA's arguments are completely irrelevant in light of the *de minimis* quantity of the proposed exports and the fact that the grant of the requested non-FTA authorization is eligible for a categorical exclusion from review under the National Environmental Policy Act ("NEPA"). The Clowdus Email, which focuses on the supposed lack of regulation of the Hialeah Facility, is incorrect with respect to nearly every factual assertion it makes. The most compelling statement in the Clowdus Email, and one of the only true factual assertions, was her acknowledgment that every state and federal governmental office that she contacted confirmed American LNG's assertion of the Hialeah Facility's regulatory status under FERC, which has been made abundantly clear with a series of declaratory orders issued by FERC over the past nine months.

³ See Motion for Leave to Intervene, Motion to Suspend, and Protest of the Industrial Energy Consumers of America, Docket No. 14-173-LNG (May 14, 2015); Motion for Leave to Intervene, Motion to Suspend, and Protest of the Industrial Energy Consumers of America, Docket No. 14-88-LNG (Jan. 9, 2015).

A. IECA Fails to Meet the Legal Standard Under NGA Section 3(a)

Pursuant to Section 3(a) of the NGA, DOE/FE “shall issue” an order authorizing natural gas exports unless it finds that the proposed exportation “will not be consistent with the public interest.” According to DOE/FE, “[Section 3(a) of the NGA] creates a rebuttable presumption that a proposed export of natural gas is in the public interest. DOE/FE must grant such an application unless opponents of the application overcome that presumption by making an affirmative showing of inconsistency with the public interest.”⁴ DOE/FE looks to the evidence developed in the record of each application proceeding to make its determination.⁵

IECA has failed to overcome the statutory presumption in favor of applications to export natural gas. IECA raised primarily the same arguments that IECA and other opponents of LNG exports raised in comments on the 2012 LNG Export Study and multiple other natural gas export proceedings. DOE/FE has correctly rejected these arguments, most recently in the *Cheniere Marketing Order*.

In its Application, American LNG cited United States government data, government studies and publicly available third-party studies, and put forth a substantial analysis of the public interest factors weighing in favor of DOE/FE’s approval of American LNG’s proposed exports. The 2012 LNG Export Study, the most comprehensive analysis of natural gas exports to date, similarly supports approval of American LNG’s proposal. IECA has alleged a variety of generalized economic concerns due to natural gas exports without any significant arguments

⁴ *Cheniere Marketing, LLC*, DOE/FE Order No. 3638 at 12 (May 12, 2015) (“*Cheniere Marketing Order*”); see also *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, DOE/FE Order No. 3282 at 5-6 (May 17, 2013) (“*Freeport Order*”); *Sabine Pass Liquefaction, LLC*, DOE/FE Order No. 2961 at 28 (“*Sabine Pass Order*”); see also *Panhandle Producers and Royalty Owners Assoc. v. ERA*, 822 F.2d 1105, 1111 (D.C. Cir. 1987) (“A presumption favoring import authorization, then, is completely consistent with, if not mandated by, the statutory directive.”); *Phillips Alaska Natural Gas Corp. and Marathon Oil Co.*, DOE/FE Order No. 1473 (April 2, 1999) (“Section 3 creates a statutory presumption in favor of approval of an export application and the Department must grant the requested export [application] unless it determines the presumption is overcome by evidence in the record of the proceeding that the proposed export will not be consistent with the public interest.”).

⁵ *Freeport Order* at 7.

against American LNG's Application in particular.⁶ After careful consideration of these general arguments, DOE/FE determined in the *Cheniere Marketing Order* that "potential negative impacts of . . . proposed exports are outweighed by the likely net economic benefits and by other non-economic or indirect benefits."⁷ The *Freeport Order* and others included similar conclusions.⁸ IECA has failed to distinguish this proceeding or the evidence presented by American LNG from the *Cheniere Marketing* and other proceedings, and IECA has failed to account for the orders of magnitude difference between the proposed exports by IECA and by other, large LNG terminals. Thus, IECA has not shown why DOE/FE should reverse course in this proceeding. DOE/FE should once again find that the IECA arguments in opposition to the Application fail to overcome the statutory presumption in favor of granting the requested export authorization.

B. American LNG's Proposed Exports Are De Minimis

American LNG proposes to export up to 3.02 Bcf per year (0.0083 Bcf per day) of natural gas, which is approximately 0.14% of the low-end level of exports considered in the 2012 LNG Export Study and 0.07% of the high-end level of exports considered. American LNG's proposed export level is orders of magnitude smaller than an LNG export terminal, such as 767 Bcf per year of exports from the Corpus Christi terminal approved in the *Cheniere Marketing Order*.⁹ Compared to the scale of other natural gas exports approved by DOE/FE, American LNG constitutes a *de minimis* amount. Because American LNG's proposed exports are so minimal, the resulting effects claimed by IECA (primarily increased natural gas prices) could not

⁶ As discussed below, the quantity of natural gas American LNG proposes to export is *de minimis* compared to other export applications and the U.S. natural gas industry as a whole. Many of IECA's arguments are not applicable to a project of such limited scope.

⁷ *Cheniere Marketing Order* at 205; see also *Lake Charles Order* at 123-24.

⁸ *Freeport Order* at 110.

⁹ *Cheniere Marketing Order* at 2.

result from such exports. Thus, IECA's protest, which recycles previously rejected arguments made against other, larger exporters, is irrelevant to American LNG.

C. IECA's Motion to Suspend Is Not Applicable to This Proceeding

IECA moves to suspend consideration of the Application until the NEPA review of the proposed exports is completed.¹⁰ This motion is puzzling since American LNG explained at length in the Application that DOE/FE's authorization of the proposed exports is eligible for a categorical exclusion from NEPA review. Even more puzzling is IECA's claim that it conducted a search of the Federal Energy Regulatory Commission's ("FERC") eLibrary system to determine the status of the environmental review of the Hialeah Facility¹¹ when American LNG explained in the Application that the Hialeah Facility is not subject to FERC's jurisdiction. IECA must have either (i) conducted an unnecessary search of FERC's eLibrary system without reading the Application or (ii) conducted an unnecessary search of FERC's eLibrary system because it did not believe what it read in the Application. In any event, there is no reason to suspend consideration of the Application until the NEPA review is completed where the grant of the non-FTA authorization is categorically excluded from NEPA review.¹² DOE/FE should deny IECA's motion.

D. The Hialeah Facility Will Be Subject to Extensive Regulation

Ms. Clowdus asserts that DOE/FE's grant of non-FTA authorization to American LNG will exempt the Hialeah Facility from regulation under other applicable federal and state laws. This is clearly not the case. As stated in the application, the Hialeah Facility is being constructed to supply LNG to the Florida East Coast Railway and other domestic consumers regardless of

¹⁰ IECA Protest at 3-5.

¹¹ IECA Protest at 3, n.10.

¹² The IECA's motion to suspend should also be denied in cases where some level of NEPA review is required. The NEPA process provides ample opportunity for public participation. There is no need for DOE to delay taking comments on non-environmental aspects of a proposed export while the NEPA review is underway.

whether DOE/FE authorizes the requested exports. Construction commenced in 2014, prior to the filing of American LNG’s application. Authorization from DOE/FE to export the commodity LNG has no impact on the laws and regulations applicable to the construction of the Hialeah Facility. DOE/FE’s authorization will simply expand the potential markets for the LNG to non-FTA countries.

Furthermore, the fact that FERC does not have jurisdiction over the construction of the Hialeah Facility does not create a “loophole” to construct the Hialeah Facility without oversight, as suggested by Ms. Clowdus. Review by FERC under the Natural Gas Act does not cause a project to be subject to other federal and state laws from which it would otherwise be exempt. Federal and state laws have their own bases for jurisdiction that are not altered by FERC. As FERC stated in the recent Pivotal LNG order, “there is no regulatory gap” where FERC does not have jurisdiction. There are over 110 LNG facilities operating in the United States, performing a variety of services. Twenty-four of those facilities are subject to FERC’s jurisdiction.¹³ Regulation by FERC is thus more the exception than the rule.

Finally, Ms. Clowdus claims to have contacted a number of federal and state agencies and learned that none of them has jurisdiction over the Hialeah Facility. She is incorrect in every case, as shown in the following table.

<u>Claim</u>	<u>Facts</u>
“U.S. Department of Transportation (DOT) sets the siting standards and safety regulations for all LNG facilities engaged in any transportation of natural gas, yet they have no applications from American LNG. <u>Their oversight was ‘not triggered’ by the DOE, I was informed.</u> ”	False. LNG Holdings has registered the Hialeah Facility with Department of Transportation’s Pipeline and Hazardous Materials Safety Administration and received an operator ID.
“The Florida Department of Environmental	False. LNG Holdings has been issued an

¹³ See <http://www.ferc.gov/industries/gas/indus-act/lng.asp>.

<p>Protection Southeast District’s Environmental Resource Permit (ERP) staff did not receive a permit application on this project because their information is that it is only a storage facility for LNG, rather than a manufacturing facility, thus no DEP permits will be required.”</p>	<p>Environmental Resource Permit by the Miami-Dade County Department of Environmental Resource Management on delegation by the State of Florida.</p>
<p>“None of the individual components (heaters, cooling towers, engines, etc.) would have to be evaluated to determine emissions points or that emissions levels are within legal limits, which normally require a state permit, because FERC oversight was not triggered.”</p>	<p>False. The State and County both reviewed LNG Holdings’ plans and specifications for compliance and determined that the emission levels fell below the thresholds for both. No air permit was required.</p>
<p>“Permitting for a facility emitting less than 250 tons per year at this location would be handled through the Miami-Dade County Local Program, however, that office has no permit application pending. (Actually, not even a building permit has been issued to American LNG, according to Miami-Dade officials.)”</p>	<p>False. American LNG understands that Ms. Clowdus spoke with an employee in the Permit Office of Miami-Dade County with whom LNG Holdings is working on its permitting. Ms. Clowdus was informed about the permits that are being processed by the County. American LNG assumes she misunderstood what she was told.</p>
<p>“This facility lies less than two miles from Miami International Airport, second largest only to New York’s Kennedy Airport It should trigger ... oversight by the Federal Energy Management Administration and the Federal Aviation Authority [sic]. Why have they not been alerted?”</p>	<p>Triply False. The Hialeah Facility is approximately four miles from Miami International Airport, not two. Miami International Airport is the eleventh largest airport, not the second.¹⁴ Most importantly, the Federal Aviation Administration has issued a Declaration of No Hazard to Air Navigation concerning the Hialeah Facility.</p>

Far from being constructed and operated “with zero regulatory oversight,” the Hialeah Facility will be subject to regulation by over 15 federal, state, and local agencies or other governmental instrumentalities. The construction and operation of the Hialeah Facility has been and will be undertaken in compliance with all applicable laws. Ms. Clowdus’s arguments against the requested authorization have no merit.

¹⁴ See http://www.faa.gov/airports/planning_capacity/passenger_allcargo_stats/passenger/media/cy13-commercial-service-enplanements.pdf. Obviously, the Miami International Airport is a large and busy airport. The point is that Ms. Clowdus has stretched the truth as a scare tactic.

IV.
REQUEST FOR EXPEDITED APPROVAL

American LNG requests that DOE/FE act expeditiously to authorize the requested exports. The record in this proceeding is complete, and there are no material issues outstanding. The proposed export quantity of 3.02 Bcf/year is miniscule. No party has demonstrated that the exports of such a small quantity will not be consistent with the public interest. As American LNG demonstrated in the application, DOE/FE need not conduct a NEPA review of the grant of the non-FTA authorization to American LNG because it is subject to categorical exclusion B5.7 of DOE/FE's regulations. Thus, American LNG's application is ripe for action by DOE/FE.

Commercial operation of the Hialeah Facility is scheduled to commence in August 2015, ahead of the original construction schedule. American LNG requests that DOE/FE grant the requested authorization no later than June 15, 2015 so that American LNG can complete the necessary arrangements to commence exporting LNG as close to the commercial operation date as possible.

IV.
CONCLUSION

For the foregoing reasons, American LNG respectfully requests that DOE/FE reject the arguments set forth in the IECA Protest and the Clowdus Email and deny the IECA's motion to suspend. DOE/FE should find that granting the authorization requested in the Application to enable American LNG to export domestically produced LNG to any country with which trade is not prohibited by U.S. law or policy is not inconsistent with the public interest and should make such a finding no later than June 15, 2015.

Respectfully submitted,

/s/ John S. Decker

John S. Decker

Christopher J. Terhune

Vinson & Elkins L.L.P.

Attorneys for American LNG Marketing

LLC

Dated: June 3, 2015

Appendix A

VERIFICATION

District of Columbia)

BEFORE ME, the undersigned authority, on this day personally appeared John S. Decker, who, having been by me first duly sworn, on oath says that he is an Attorney for American LNG Marketing LLC, and is duly authorized to make this Verification on behalf of American LNG Marketing LLC; that he has read the foregoing instrument and that the facts therein stated are true and correct to the best of his knowledge, information and belief.

John S. Decker
John S. Decker

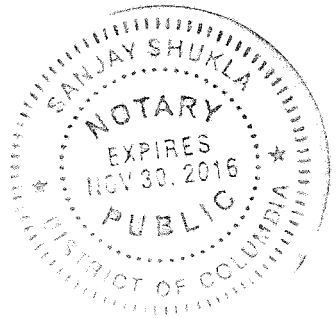
SWORN TO AND SUBSCRIBED before me on the 2nd day of June, 2015.

Sanjay Shukla

Name: SANJAY SHUKLA
Title: Notary Public

My Commission expires:

November 30th, 2016



District of Columbia: SS
Subscribed and sworn to before me, in my presence,
this 2nd day of June, 2015
by John Decker
Sanjay Shukla, Notary Public
My Commission Expires NOV. 30th, 2016

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, DC this 3rd day of June, 2015.

/s/ Christopher J. Terhune
Christopher J. Terhune