UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

IN THE MATTER OF:

FREEPORT LNG EXPANSION, L.P.	**)**	**FE Docket No. 21-98-LNG**
FLNG LIQUEFACTION, LLC	**)**	
FLNG LIQUEFACTION 2, LLC &	**)**	
FLNG LIQUEFACTION 3, LLC	**)**	

ANSWER IN OPPOSITION TO PROTESTS AND COMMENTS

Pursuant to Section 590.304(f) of the Department of Energy's ("DOE") regulations,[1] Freeport LNG Expansion, L.P. ("Freeport Expansion"), FLNG Liquefaction, LLC ("FLIQ1"), FLNG Liquefaction 2, LLC ("FLIQ2") and FLNG Liquefaction 3, LLC ("FLIQ3" and together with Freeport Expansion, FLIQ1 and FLIQ2, "FLEX") hereby submit the instant answer ("Answer") in opposition to (1) the Notice of Intervention, Protest and Comment filed by the Industrial Energy Consumers of America ("IECA") on December 7, 2021 ("IECA Filing"), (2) the Motion to Intervene and Protest filed by the Sierra Club and the Natural Resources Defense Council ("NRDC") on December 7, 2021 ("Sierra Club/NRDC Filing"), and (3) the Comment in Opposition filed by the Center for Biological Diversity ("CBD Filing") on December 7, 2021,[2] each submitted to the DOE's Office of Fossil Energy and Carbon Management ("DOE/FECM")[3]

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1 10 C.F.R. § 590.304(f) (2020).

2 The Center for Biological Diversity failed to serve a copy of its pleading on FLEX or its Counsel. *See* 10 C.F.R. § 590.304(d) ("Protests shall be served on the applicant and all parties by the person filing the protest.").

3 DOE/FECM was previously named the Office of Fossil Energy ("DOE/FE"), and in this regard, the prior acronym "DOE/FE" is used herein when referencing historical documents.

in the above-captioned proceeding.[4] The IECA Filing, Sierra Club/NRDC Filing and the CBD Filing are referred to collectively herein as the Protests.

In support of the instant Answer, FLEX states the following:

A. BACKGROUND

On September 10, 2021, FLEX filed an application with DOE/FECM requesting authorization to engage in additional long-term, multi-contract exports of domestically produced liquefied natural gas ("LNG") in an amount up to 88 billion cubic feet ("Bcf") per year ("Bcf/y") from the Freeport LNG Liquefaction Project (the "Liquefaction Project") at the Freeport LNG Terminal on Quintana Island, for a term extending through December 31, 2050 ("Application"). FLEX is seeking such authorization to export LNG to any nation that has, or in the future develops, the capacity to import LNG, with which the United States ("U.S.") does not have a free trade agreement ("FTA") requiring the national treatment for trade in natural gas and LNG, and with which trade is not prohibited by U.S. law or policy ("Non-FTA Nations"). As noted in the

[4] Matthew Deinhardt filed a comment in opposition on December 6, 2021 which raises several alleged deficiencies that are not requirements for an export application ("Deinhardt Comment"). While Mr. Deinhardt submitted his comment on December 3, 2021, because he submitted it at 6:52 PM, after the 4:30 PM filing deadline, the filing is deemed submitted on December 6, 2021. 10 C.F.R § 590.105(a) ("[d]ocuments received after the regular business hours of 8 a.m. to 4:30 p.m. are deemed filed on the next regular business day.") Significantly, Mr. Deinhardt failed to serve a copy of his Comment in Opposition on FLEX or its Counsel. *See* 10 C.F.R. § 590.304(d) ("Protests shall be served on the applicant and all parties by the person filing the protest.").

Application, in FE Docket Nos. 10-161-LNG,[5] 11-161-LNG,[6] and 16-108-LNG,[7] FLEX is currently authorized by DOE/FECM to export LNG from the Liquefaction Project to Non-FTA Nations in an amount up to 782 Bcf/y of natural gas.

The requested increase in exports of 88 Bcf/y is consistent with the application filed by FLIQ1, FLIQ2, FLIQ3 and Freeport LNG Development, L.P. ("Freeport LNG Development" and together with FLIQ1, FLIQ2, FLIQ3, "Freeport LNG") on June 29, 2021 with the Federal Energy Regulatory Commission ("FERC" or "Commission") requesting authorization to increase the Liquefaction Project's authorized maximum LNG production capacity from 782 Bcf/y to

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[5] *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas to Non-Free Trade Agreement Nations, DOE/FE Order No. 3282, FE Docket No. 10-161-LNG (May 17, 2013); *Freeport LNG Expansion, L.P. et al.*, Order Amending Applications in Docket Nos. 10-160-LNG, 10-161-LNG, and 12-06-LNG and Granting Request in Docket No. 11-161-LNG to add FLNG Liquefaction 2, LLC and FLNG Liquefaction 3, LLC as Applicants and Authorization Holders, DOE/FE Order Nos. 2913-A, 3066-A, 3282-A (Feb. 7, 2014) [hereinafter *Amendment Order*]; *Freeport LNG Expansion, L.P. et al.*, Order Amending DOE/FE Order Nos. 3282 and 3357, DOE/FE Order Nos. 3282-B & 3357-A, FE Docket Nos. 10-161-LNG & 11-161-LNG (June 6, 2014); *Freeport LNG Expansion, L.P. et al.*, Final Opinion and Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas to Non-Free Trade Agreement Nations, DOE/FE Order No. 3282-C, FE Docket No. 10-161-LNG (Nov. 14, 2014) [hereinafter *DOE/FE Order No. 3282-C*]; *Freeport LNG Expansion, L.P. et al.*, Order Extending Export Term for Authorizations to Free Trade and Non-Free Trade Agreement Nations through December 31, 2050, DOE/FE Order Nos. 2913-C, 3066-B, 3282-D, 3357-D ,3957-A, FE Docket Nos. 10-160-LNG, 10-161-LNG, 11-161-LNG, 12-06-LNG, & 16-108-LNG (October 21, 2020) [hereinafter *Extension Order*].

[6] *Freeport LNG Expansion, L.P. et al.*, Order Conditionally Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas to Non-Free Trade Agreement Nations, DOE/FE Order No. 3357, FE Docket No. 11-161-LNG (Nov. 15, 2013); *Freeport LNG Expansion, L.P. et al.*, Errata to DOE/FE Order No. 3357, FE Docket No. 11-161-LNG (Dec. 13, 2013); *Amendment Order*; *Freeport LNG Expansion, L.P. et al.*, Order Amending DOE/FE Order Nos. 3282 and 3357, DOE/FE Order Nos. 3282-B & 3357-A, FE Docket Nos. 10-161-LNG & 11-161-LNG (June 6, 2014); *Freeport LNG Expansion, L.P. et al.*, Final Opinion and Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas to Non-Free Trade Agreement Nations, DOE/FE Order No. 3357-B, FE Docket No. 11-161-LNG (Nov. 14, 2014); *Freeport LNG Expansion, L.P. et al.*, Opinion and Order Denying Request for Rehearing of Orders Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas, to Non-Free Trade Agreement Nations, DOE/FE Order No. 3357-C, FE Docket No. 11-161-LNG (Dec. 4, 2015); *Extension Order*.

[7] *Freeport LNG Expansion, L.P. et al.*, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Freeport LNG Terminal on Quintana Island, Texas, to Non-Free Trade Agreement Nations, DOE/FE Order No. 3957, FE Docket No. 16-108-LNG (Dec. 19, 2016); *Extension Order*.

approximately 870 Bcf/y, consistent with the highest production scenario previously reviewed for upper limit normal operations by FERC staff, and consistent with the maximum combined daily LNG production capacity of the three liquefaction trains authorized as part of the Liquefaction Project ("2021 FERC Application").[8] Importantly, as noted in the 2021 FERC Application, the requested increase in production and export capacity involves "no additional construction or modification of previously-authorized facilities..."[9]

The 2021 FERC Application is currently under Commission review in FERC Docket No. CP21-470-000.[10] On December 14, 2021, the Commission issued a scheduling notice ("Scheduling Notice") indicating that it intends to prepare an Environmental Assessment ("EA") to review impacts associated with the proposal, and FLEX anticipates that DOE will be provided the opportunity to participate and comment as a cooperating agency.[11] The EA is expected to be issued on April 22, 2022, with a 90-day federal decision deadline of July 21, 2022.[12]

On October 8, 2021, DOE/FECM published notice of FLEX's Application in the Federal Register, setting a December 7, 2021 deadline for filing protests, motions to intervene, notices of intervention, and written comments.[13] In response, the Deinhardt Comment, Sierra Club/NRDC Filing, IECA Filing and CBD Filing were submitted to DOE/FECM, each objecting to FLEX's application for a number of reasons, and asserting that the request to increase export volumes

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8 *Freeport LNG Development, L.P. et al*, Application for Limited Amendment to Authorizations Granted Under Section 3 of the Natural Gas Act, FERC Docket No. CP21-470-000 (June 29, 2021).

9 *2021 FERC Application* at 5.

10 *Freeport LNG Development, L.P. et al*, Notice of Application and Establishing Intervention Deadline, FERC Docket No. CP21-470-000 (July 14, 2021).

11 *Freeport LNG Development, L.P. et al*. Notice of Schedule for Environmental Review of the Freeport LNG Capacity Amendment Project, Docket No. CP21-470-000 (December 14, 2021).

12 *Id*.

13 86 Fed. Reg. 56,258 (Oct. 8, 2021).

should be denied because it is contrary to the public interest. As detailed herein, the arguments raised in the Protests are misleading, do not bear directly on FLEX's Application and should be disregarded as detailed herein.

B. ANSWER IN OPPOSITION

(1) OVERVIEW

At the outset, it bears noting that FLEX's proposal reflects a relatively small increase in total exports at an operational facility and involves no new construction, nor any impact to existing environmental permits,[14] nor additional authorization for ship calls. The lack of environmental impacts associated with the instant proposal is one of its many benefits. Despite the contentions set forth in the Protests filed in this proceeding, LNG exports have a myriad of benefits to the local, state and national economy, in addition to balance of trade benefits, international relations benefits and climate benefits.

(2) RELIABILITY AND DOMESTIC PRICE IMPACTS

Sierra Club and NRDC contend that "[w]holesale gas prices will be double last winter's, driven largely by increased demand for LNG exports."[15] This generic argument has no applicability to FLEX's Application. As an initial matter, while the Application requested that DOE/FECM issue a January 2022 approval, as noted above, FERC recently issued a Scheduling

[14] There are no impacts associated with the proposed increase in production capacity to Freeport LNG's existing environmental permits, including air emissions permits. Freeport LNG does note however, that while there is no change to the permitted air emission levels, Freeport LNG is filing an administrative alteration to its Texas Commission on Environmental Quality ("TCEQ") air permit to reflect the increased throughput. In addition, Freeport LNG also intends to file an amendment with the TCEQ to its NSR permits to address certain permitted emissions levels related to scheduled maintenance activities and existing operations, which are unrelated to the proposed increase in production capacity and would not be affected thereby.

[15] *Sierra Club/NRDC Filing* at 1.

Notice indicating that the associated EA is expected to issue April 22, 2022.[16] Accordingly, it is impossible for approval of the Application to impact wholesale gas prices this winter.

Furthermore, the Protests erroneously assert that LNG exports are primarily responsible for the increase in U.S. natural gas prices. First, while commodity prices have recently increased throughout the world, U.S. natural gas prices are still far less than other countries, and continue to decline from pandemic-induced highs. The global market volatility caused by the COVID-19 pandemic is not reflective of actual supply and demand, nor is it a reasonable projection of future prices or market activity.[17]

Second, it is unreasonable to suggest that LNG exports are the sole cause of the recent increase in domestic natural gas prices. As the International Energy Agency's ("IEA") Q4 2021 Gas Market Report noted, "the combination of recovering economic activity, ***lower liquefied natural gas (LNG) availability*** and a succession of severe weather events has put the global gas system under strong pressure and sent market prices to new highs,"[18] indicating that higher prices can actually be attributed in part to lower than usual LNG cargos. At a recent Senate Energy and Natural Resources Committee Hearing on November 16, 2021, IEA's chief energy economist testified that "[t]here is no single cause behind recent energy price trends. Multiple factors have contributed to the tightening of markets," including "rapid economic recovery from the pandemic-induced recession," "[w]eather-related events," "[o]utages to supply…[including] in the case of

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[16] *Scheduling Notice*.

[17] EIA Acting Administrator Steve Nalley has acknowledged unknowns about the omicron variant of the coronavirus are creating a complicated environment for the entire energy sector and are affecting forecasting regarding prices, consumption, and production. S&P Global Platts, US EIA slashes early 2022 gas price forecast citing fall storage build pickup (December 7, 2021) *available at* spglobal.com/platts/en/market-insights/latest-news/natural-gas/120721-us-eia-slashes-early-2022-gas-price-forecast-citing-fall-storage-build-pickup.

[18] IEA, *Gas Market Report, Q4 2021 including Global Gas Security Review 2021*, (October 2021), *available at* https://www.iea.org/reports/gas-market-report-q4-2021 (*emphasis added*).

natural gas… unplanned outages at LNG liquefaction plants, some upstream issues, unforeseen repair works, and ***project delays***[19] that further tightened global markets," "[s]tances of some major suppliers," and "[u]nderlying investment dynamics."[20] Nonetheless, natural gas prices have already begun to decline considerably, and the U.S. Energy Information Administration ("EIA") has forecast a continued drop in prices throughout 2022.[21] U.S. natural gas futures fell more than ten percent on a single day in early December, with prices falling to the lowest levels since August.[22] In total, natural gas prices are down almost 41 percent from their peak in October,[23] with a winter forecast of warmer than average weather providing additional downward pressure on prices.[24]

Sierra Club and NRDC also argue that producers are not responding to increased exports, resulting in higher prices. However, EIA does predict that production will continue to outpace demand in EIA's Annual Energy Outlook 2021 ("2021 AEO"), which provides energy projections through 2050 (consistent with the authorization requested in the Application), indicating that

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[19] FLEX notes that attempts to alleviate constrained northeast capacity through the build out of additional pipeline infrastructure, which would reduce prices during peak and winter months, have historically been vehemently opposed by both Sierra Club and NRDC.

[20] U.S. Senate Energy and Natural Resources Committee Hearing on Causes, outlook, and implications of domestic and international energy price trends, Written Testimony of Tim Gould, Chief Energy Economist, IEA (November 16, 2021) (*emphasis added*).

[21] EIA, *Short-Term Energy Outlook, December 2021* (December 7, 2021) available at https://www.eia.gov/outlooks/steo/archives/dec21.pdf [hereinafter *December 2021 STEO*]. *See also*, S&P Global Platts, US EIA slashes early 2022 gas price forecast citing fall storage build pickup (December 7, 2021) *available at* spglobal.com/platts/en/market-insights/latest-news/natural-gas/120721-us-eia-slashes-early-2022-gas-price-forecast-citing-fall-storage-build-pickup.

[22] CNBC, U.S. natural gas plummets more than 10%, following worst week since 2014 (December 6, 2021) *available at*: https://www.cnbc.com/2021/12/06/us-natural-gas-plummets-more-than-10percent-following-worst-week-since-2014.html.

[23] The New York Times, Sinking natural gas prices are a sign of hope for household winter heating bills (December 7, 2021) *available at*: https://www.nytimes.com/2021/12/07/business/natural-gas-prices.html.

[24] CNBC, U.S. natural gas sinks, on track for worst month in three years (November 30, 2021) available at: https://www.cnbc.com/2021/11/30/us-natural-gas-sinks-on-track-for-worst-month-in-three-years.html

"[c]ontinuing record-high domestic energy production supports natural gas exports…"[25] The EIA further predicts that natural gas production will establish a new monthly record high by the end of 2022, beating the previous monthly record production set in November 2019.[26] The number of natural gas-directed rigs, considered a leading indicator of newly drilled wells, has increased from a pandemic low of 68 to 102 by mid-November 2021.[27] Furthermore, total natural gas underground storage reserves for the lower-48 states are within the five-year historical range and only 1.8 percent below the 5-year historical average, and recent total natural gas draws from lower-48 underground storage reserves are reduced versus the same time last year.[28] Natural gas injections into underground storage reserves have outpaced the five-year national average in each of September, October and November of 2021.[29]

Additionally, it is not necessarily the case that a large production increase is necessary to accommodate increased exports. If U.S. gas consumption decreases in coming years—consistent with the push to utilize renewable resources on a greater scale domestically—this will free up more U.S. gas resources to rapidly phase out coal and other dirtier burning fossil fuels abroad, helping facilitate the global transition to lower emissions worldwide.

IECA makes a number of arguments regarding the adequacy of domestic natural gas supplies and the potential price impact of increased LNG exports. These types of arguments have

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[25] EIA, Annual Energy Outlook 202l with projections to 2050, pg. 3 (February 2021) available at: https://www.eia.gov/outlooks/aeo/pdf/AEO_Narrative_2021.pdf.

[26] EIA, EIA forecasts U.S. natural gas production will establish a new monthly record high in 2022 (December 16, 2021) available at: https://www.eia.gov/todayinenergy/detail.php?id=50678.

[27] *Id.*

[28] EIA, Weekly Natural Gas Storage Report (December 16, 2021) available at: https://ir.eia.gov/ngs/ngs.html.

[29] *December 2021 STEO*.

previously been raised by IECA and rejected by DOE.[30] IECA incorrectly claims that existing approved LNG export volumes already jeopardize both natural gas and electric reliability. As IECA is well aware, the existing approved volume of exports is not equivalent to the actual volume of exports, or even the actual potential volume of exports. Consistent with DOE's pro-competitive policies, the market determines winners and losers, and the reality is that not all projects can or will get funded and constructed. Thus, not all approved exports will occur. Therefore, the real potential volume of exports is far lower than that currently approved by DOE/FE.

In this regard, the EIA's December 2021 Short Term Energy Outlook ("STEO") indicates that "U.S. LNG exports averaged 10.7 Billion cubic feet per day ("Bcf/d") in November."[31] EIA's November 2021 STEO notes that to date, U.S. LNG exports have never exceeded 11 Bcf/d.[32] Thus, the reality of the current export landscape is quite different than what IECA suggests.

In 2020, LNG exports (other than by ISO container) occurred from only six liquefaction facilities -- the Liquefaction Project, Sabine Pass, Corpus Christi, Cove Point, Cameron, and Elba Island.[33] This is a small fraction of the number of LNG export authorizations issued to date. While some additional LNG projects may come online over the next decade, not every project that has received export authorization is going to be constructed. Furthermore, despite the misleading data presented in the IECA Filing, U.S. LNG exports are a small fraction of total U.S. natural gas production. In 2022, total U.S. natural gas production is projected to reach a monthly high of 97.5

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30 *See, e.g.*, Driftwood LNG LLC, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, DOE/FE Order No. 4373, at 47, FE Docket No. 16-144-LNG (May 2, 2019).

31 *December 2021 STEO*.

32 EIA, *Short-Term Energy Outlook, November 2021* (November 9, 2021) available at https://www.eia.gov/outlooks/steo/archives/nov21.pdf

33 DOE/FECM, LNG Annual Report – 2020 (February 16, 2021).

Bcf/d,[34] but U.S. LNG capacity is only projected to reach a nominal 11.4 Bcf/d, and with a peak capacity of 13.9 Bcf/d.[35] Exports account for a miniscule portion of the U.S. estimated recoverable natural gas resource base of 3,368 Tcf.[36] The amount of LNG that the U.S. will export in the next 30 years will remain a small fraction of both proven reserves and the total resource base, and will be limited by both the overall capacity of the world LNG market and U.S. supply and demand. In this regard, U.S. LNG export levels are anticipated to remain below projected U.S natural gas production levels through 2050 for all forecasted cases in the 2021 AEO.[37]

On a similar note, IECA provides no support for its statement that an "increase [in] natural gas production, pipeline, and storage capacity by 57 or 70 percent [is required] to accommodate the approved DOE NFTA export demand."[38] IECA does not demonstrate that existing storage and pipeline capacity is inadequate for U.S. gas production; nor does it demonstrate a causal link between the Application and its speculative hypothetical inadequacy.

Finally, contrary to the assertions of Sierra Club and NRDC, DOE has not refused to "exercise supervisory authority over already-approved exports."[39] Permit holders are subject to ongoing oversight and reporting requirements per the conditions of their authorizing orders.

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[34] EIA, *EIA forecasts U.S. natural gas production will establish a new monthly record high in 2022* (December 16, 2021) available at: https://www.eia.gov/todayinenergy/detail.php?id=50678.

[35] EIA, *U.S. liquefied natural gas export capacity will be world's largest by end of 2022* (December 9, 2021) available at: https://www.eia.gov/todayinenergy/detail.php?id=50598 ("The nameplate, or nominal, capacity of a liquefaction facility specifies the amount of LNG produced in a calendar year under normal operating conditions, based on the engineering design of a facility. Peak LNG production capacity is the amount of LNG produced under optimal operating conditions, including modifications to production processes that increase operational efficiency").

[36] Potential Gas Committee, Press Release (October 19, 2021) available at: potentialgas.org/press-release.

[37] EIA, *AEO2021 Press Release*, available at https://www.eia.gov/pressroom/presentations/AEO2021_Release_Presentation.pdf (February 3, 2021) at 16.

[38] *IECA Filing* at 2.

[39] *Sierra Club/NRDC Filing* at 9.

(3) DOE/FECM EXPORT TERM EXTENSION

Notwithstanding IECA's statement to the contrary,[40] DOE did not extend export approvals for 30 years. By allowing authorization holders to apply to extend their export terms through 2050, DOE extended out existing 20–30-year export terms. For example, FLEX's export authorization in FE Docket No. 10-11-LNG granted a 20-year export term which commenced in late 2019. Therefore, the extension granted was for approximately 11 years, not 30.

Secondly, IECA's contention that "[n]o one can forecast energy supply and demand for a 30-year period"[41] is simply incorrect. DOE and the EIA have been conducting long term energy forecasts for years, which they publish annually. These forecasts are based on complex modelling and detailed analysis performed by EIA and reflect projections. These forecasts are projections, not certainties, which is why modelling is performed for a range of scenarios and underlying assumptions, to account for different potential outcomes and factors. Additionally, supply projections have generally been conservative and proved to be far short of actual available production.

(4) DOE MACROECONOMIC STUDIES AND GHG LIFE CYCLE ANALYSIS

While Sierra Club and NRDC argue that "the current surge in gas prices calls [the] prior [DOE macroeconomic] analyses into question, and DOE cannot approve additional exports without carefully examining the continuing validity of [the DOE commissioned] analyses,"[42] it is not reasonable to treat pandemic pricing and market-response to an unprecedented global event as undermining years of modelling and study. The IECA raises generalized objections to DOE's

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40 *IECA Filing* at 2

41 *Id.*

42 *Sierra Club/NRDC Filing* at 9.

Macroeconomic Study and its application to export approval proceedings, none of which is particularized to the instant proceeding.[43] Moreover, Stephen Nalley, Acting Administrator of the EIA, indicated in testimony on November 16, 2021 before the U.S. Senate Committee on Energy and Natural Resources that additional analysis of LNG exports and associated price impacts is expected to be released in Spring of 2022.[44]

Furthermore, the IECA filing makes the incorrect assertion that the DOE-commissioned studies were deficient because they failed to consider available pipeline capacity.[45] First, this collateral attack on DOE's studies is wholly inappropriate for this proceeding, as no additional pipeline capacity is proposed or required in conjunction with FLEX's request to DOE, nor its request to increase production capacity at FERC. Second, FERC—not DOE/FECM—is the appropriate venue to raise concerns with regard to the adequacy and availability of pipeline capacity. DOE/FECM has no jurisdiction over the siting, construction or operation of interstate pipelines.[46]

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[43] While the IECA raises numerous objections about the methodology and conclusions of DOE's Macroeconomic Study, the IECA has cited to pricing predictions made within the study to support their arguments in numerous filings. *See*, e.g., *Driftwood LNG LLC*, Industrial Energy Consumers of America Notice of Intervention, Protest and Comments Updated with Certificate of Service at 4, FE Docket No. 16-144-LNG (December 12, 2018); *Sabine Pass Liquefaction, LLC*, Industrial Energy Consumers of America Notice of Intervention, Protest and Comment at 10, FE Docket No. 19-125-LNG (December 20, 2019); *Commonwealth LNG, LLC*, Industrial Energy Consumers of America Notice of Intervention, Protest and Comment at 10, FE Docket No. 19-134-LNG (December 20, 2019); *Cheniere Marketing, LLC and Corpus Christi Liquefaction, LLC*, Industrial Energy Consumers of America Notice of Intervention, Protest and Comment at 11, FE Docket No. 19-124-LNG (December 20, 2019).

[44] U.S. Senate Energy and Natural Resources Committee Hearing on Causes, Outlook and Implications of Domestic and International Energy Price Trends (November 16, 2021) (Statement of Stephen Nalley) available at: https://www.energy.senate.gov/hearings/2021/11/full-committee-hearing-on-domestic-and-international-energy-price-trends (at 47:50 to 48:15).

[45] *IECA Filing* at 3.

[46] FERC, not DOE/FECM "regulates the transmission and sale of natural gas for resale in interstate commerce; [and] [a]pproves the siting and abandonment of interstate natural gas pipelines and storage facilities." FERC, What FERC Does, https://www.ferc.gov/about/ferc-does.asp (August 14, 2018).

IECA contends "LNG exporters have locked-up firm pipeline capacity. This decreases pipeline capacity that is available to domestic consumers. Once locked up, domestic consumers do not have access to it. If a manufacturer wants to build a new facility, it may not have sufficient pipeline capacity and the plans for construction will be terminated."[47] As a preliminary matter, LNG exporters have not "locked up" all the firm pipeline capacity. Moreover, to the extent there is not adequate capacity available, either directly from a pipeline or through capacity release, pipelines in the U.S. are generally amenable to expanding their facilities to serve new customers if there is adequate demand – such as in the case of a new manufacturing facility.

IECA further states that "DOE has an obligation to know whether there is adequate pipeline capacity to deliver previously approved LNG exports before new applications are considered."[48] However, for each new export facility approved, FERC requires that the project demonstrate there is adequate pipeline capacity for the volumes proposed. In that regard, and because exports to Non-FTA Nations are not authorized until after FERC approval is issued for the underlying facilities that support such export volumes, DOE export authorizations generally are not issued for facilities that do not have a direct pipeline interconnect sufficient to transport the requested export quantity.

The IECA also uses its motion to raise a collateral attack on the DOE Export Studies' compliance with the Data Quality Act.[49] This is not the appropriate venue or forum for this argument. Furthermore, IECA is merely regurgitating here comments it submitted previously to

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47 *IECA Filing* at 3.

48 *Id.*

49 *Id.* at 8.

DOE on the "Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports", and such arguments have already been reviewed and dismissed by DOE.[50]

Sierra Club and NRDC further argue that the life cycle analyses both ask the wrong questions and do not reflect available science regarding LNG's impacts.[51] DOE/FE has previously held with regard to comments filed by the Sierra Club in another export proceeding regarding the 2019 Life Cycle Analysis that:

> to model the effect that U.S. LNG exports would have on net global GHG emissions would require projections of how each of these fuel sources would be affected in each LNG-importing nation. Such an analysis would not only have to consider market dynamics in each of these countries over the coming decades, but also the interventions of numerous foreign governments in those markets. Moreover, the uncertainty associated with estimating each of these factors would likely render such an analysis too speculative to inform the public interest determination in DOE's non-FTA proceedings. Based on the evidence, however, DOE sees no reason to conclude that U.S. LNG exports will increase global GHG emissions in a material or predictable way.[52]

(5) SCOPE OF NEPA REVIEW; CATEGORICAL EXCLUSION

Sierra Club and NRDC further contend that the Natural Gas Act and NEPA require DOE to evaluate and weigh environmental impacts occurring through the LNG life cycle,[53] however, the D.C. Circuit has confirmed that the scope of DOE's NEPA review is limited to reasonably foreseeable direct and indirect effects of an action, and that DOE "need not foresee the

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50 Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study, 83 Fed. Reg. 67,251 (December 28, 2018).

51 *Sierra Club/NRDC Filing* at 18.

52 *Rio Grande LNG, LLC*, Opinion and Order Granting Long-Term Authorization to Export Liquefied Natural Gas to Non-Free Trade Agreement Nations, DOE/FE Order No. 4492, at 46, FE Docket No. 15-190-LNG (February 10, 2020). *See also*, U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update— Response to Comments, 85 Fed. Reg. 72, 85 (Jan. 2, 2020).

53 *Sierra Club/NRDC Filing* at 10.

unforeseeable."[54] DOE has accordingly limited the scope of its review to what it considers to be reasonably foreseeable effects of LNG exports. In reviewing DOE's NEPA obligations, the D.C. Circuit has held that DOE "offered a reasoned explanation as to why it believed the indirect effects pertaining to increased gas production were not reasonably foreseeable."[55]

Sierra Club and NRDC, as well as the Center for Biological Diversity, argue that a categorical exclusion should not be applied to LNG exports or the Application's proposed exports.[56] Categorical exclusions are categories of actions that an agency "has determined, in its agency NEPA procedures, normally do not have a significant effect on the human environment"[57] and "for which, therefore, neither an environmental assessment nor an environmental impact statement normally is required."[58] Under DOE's regulations, as amended in December 2020,[59] Categorical Exclusion B5.7 is applicable to "[a]pprovals or disapprovals of new authorizations or amendments of existing authorizations to export natural gas under section 3 of the Natural Gas Act and any associated transportation of natural gas by marine vessel."[60] In its notice of the final rule amending Categorical Exclusion B5.7, DOE indicated that its review of LNG export applications are limited to "consideration of effects that are reasonably foreseeable and have a sufficiently close causal connection to the granting of the export authorization."[61]

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54 *Sierra Club v. DOE*, 867 F.3d 189, 198 (D.C. Cir. 2017).

55 *Id*.

56 *Sierra Club/NRDC Filing* at 12.

57 40 C.F.R. §1508.1.

58 DOE, Office of NEPA Policy and Compliance, Categorical Exclusion (CX) Determinations, *available at*: https://www.energy.gov/nepa/nepa-documents/categorical-exclusion-cx-determinations#:~:text=Categorical%20exclusions%20are%20categories%20of%20actions%20that%20DOE,nor%20an%20environmental%20impact%20statement%20normally%20is%20required.

59 85 Fed. Reg. 78,197 (Dec. 4, 2020).

60 10 CFR Part 1021, Subpart D, Appendix B, Categorical Exclusion B5.7.

61 85 Fed. Reg. 78,197, at 78197 (Dec. 4, 2020).

Consequently, DOE noted that the environmental impacts of its export authority under the NGA are limited to those associated with activities occurring at the point of delivery to the export vessel and extending to the territorial waters of the receiving country.[62] DOE stated that the new rule is consistent with court precedent holding that an agency need not "gather or consider environmental information if it has no statutory authority to act on that information."[63] As the D.C. Circuit similarly noted, "[t]he purpose of NEPA is not to "generate ...excellent paperwork," but rather to "foster excellent action" through informed decisionmaking….At a certain point, [DOE]'s obligation to drill down into increasingly speculative projections about [] environmental impacts is also limited by the fact that it lacks any authority to control"[64] the source of the impact or effects therefrom. The issues raised in the Sierra Club/NRDC Filing and the CBD Filing were largely already raised when the amended categorical exclusion was proposed, and such issues were dismissed by DOE in that proceeding.[65]

(6) ENVIRONMENTAL IMPACTS; CLIMATE CHANGE IMPACTS

The Sierra Club and NRDC contend that environmental impacts of FLEX's proposed export increase also weigh against the public interest, in that the proposed exports will further harm Sierra Club and NRDC members by increasing gas production and associated air pollution, including, but not limited to, emission of greenhouse gases and ozone precursors. Sierra Club and NRDC further assert that "[i]ncreasing export volumes will also necessarily increase shipping traffic beyond levels that would otherwise occur."[66]

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62 *Id.*

63 *Id. (citing Sierra Club v. FERC,* 867 F.3d 1357, 1372 (D.C. Cir. 2017) at 78201.

64 *Sierra Club v. DOE,* 867 F.3d at 212.

65 85 Fed. Reg. 78,197 (Dec. 4, 2020).

66 *Sierra Club/NRDC Filing* at 3.

However, the proposed increase in liquefaction production capacity does not entail the construction of new facilities, or the modification of previously authorized facilities. While additional feed gas will be supplied to the Liquefaction Project as a result of the increase, the Liquefaction Project can achieve the requested LNG production level while remaining within previously-permitted levels for air emissions and other regulatory requirements. No additional ship calls beyond those currently authorized for the facility will be required in connection with the increased export capacity, and no anticipated increase in noise is associated with the request. In short, there are no impacts associated with the proposed increase in production/export capacity to Freeport LNG's existing environmental permits, including its air emissions permits.[67] Furthermore, there is no direct association between increased flaring and increased export capacity as the Liquefaction Project flare at the pretreatment facility is an emergency flare and not an operational flare, and therefore, flaring will not increase proportional to throughput.

Additionally, Sierra Club and NRDC, raising an objection not at all particularized to this proceeding, contend that "well before 2050, the world must have fully transitioned to net-zero emissions, as the U.S.—and the world—recently affirmed in Glasgow. There is no place for LNG in that future."[68] This is simply incorrect. LNG has a critical role to play in the energy transition of the future and will help facilitate the move to reduced emissions.[69] As Secretary of Energy

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[67] Additionally, Freeport LNG Development and Talos Energy recently announced a plan to develop a carbon capture and sequestration project at the pretreatment facility, in further support of emissions reduction goals. Talos Energy, TALOS ENERGY AND FREEPORT LNG TO DEVELOP CARBON CAPTURE AND SEQUESTRATION PROJECT ON TEXAS GULF COAST (November 15, 2021) available at https://www.talosenergy.com/news/press-release-details/2021/Talos-Energy-And-Freeport-LNG-To-Develop-Carbon-Capture-And-Sequestration-Project-On-Texas-Gulf-Coast/default.aspx.

[68] *Sierra Club/NRDC Filing* at 2.

[69] ICF, Update to the Life-Cycle Analysis of GHG Emissions for US LNG Exports: Analysis (July 9, 2020) available at: https://www.api.org/news-policy-and-issues/lng-exports/new-lifecycle-analysis-of-us-lng-exports (finding that using U.S. liquified natural gas in China, Germany and India rather than coal for electricity generation produces on average 50.5 percent fewer greenhouse gas emissions in all base case scenarios studied, and that U.S. LNG delivers 48 percent fewer emissions than Chinese coal, 51 percent fewer emissions than German coal and

Granholm stated herself in her confirmation hearing before the Senate Committee on Energy and Natural Resources, "U.S. LNG exports can have an important role to play in reducing international consumption of fuels that have greater contribution to greenhouse gas emissions."[70]

Despite NRDC and Sierra Club's assertions to the contrary, LNG exports are key to national and international efforts to reduce emissions, with global facilities investing billions in low-carbon and no-carbon solutions. Internationally, LNG exports support our allies' efforts to reach net-zero emissions, allowing them to generate electricity with natural gas versus higher-emitting energy sources. In addition, for every 1% increase in fast-reacting fossil technologies, which includes most gas-generation technologies, renewable power generation increases by 0.88%.[71]

(7) IECA REQUEST FOR EXPORT RESTRICTIONS AND PROTECTIONIST ACTION

IECA argues that only surplus natural gas should be allowed for export.[72] While there is no explicit criteria for the public interest analysis laid out in DOE's regulations, the 1984 DOE Policy Guidelines state that "[t]he market, not government, should determine the price and other contract terms of imported [and exported] gas," and that "the federal government's primary

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48 percent fewer emissions than Indian coal. The study further found that transportation and shipping distance have the least impact on emissions levels in the supply chain, demonstrating that the export journey for U.S. LNG has limited environmental impact.); Forbes, Our Climate Fight Begins With Exporting U.S. Natural Gas to Displace Coal (November 21, 2021) available at: https://www.forbes.com/sites/judeclemente/2021/11/21/the-climate-fight-begins-with-exporting-us-natural-gas-to-displace-coal/?sh=34d8d0065b17 (arguing that U.S. LNG exports are a critical part in helping the developing world reduce coal consumption.).

[70] U.S. Senate Committee on Energy and Natural Resources Hearing, The Nomination of the Honorable Jennifer M. Granholm to be Secretary of Energy, Responses to Questions for the Record submitted to the Honorable Jennifer M. Granholm, pg. 16 (January 27, 2021).

[71] Natural Bureau of Economic Research, NBER Working Paper Series, Bridging the Gap: Do Fast Reacting Fossil Technologies Facilitate Renewable Energy Diffusion? (July 2016) *available at* https://www.nber.org/system/files/working_papers/w22454/w22454.pdf at 2.

[72] *IECA Filing* at 4.

responsibility … should be to evaluate the need for the gas…."[73] Consistent with this policy, in prior export approvals DOE/FE has held that domestic need for the natural gas proposed to be exported is "the only explicit criterion that must be considered in determining the public interest."[74]

Additionally, IECA's requests that DOE erect trade barriers in favor of the U.S. manufacturing industry, and actively inhibit one industry to create an unsubstantiated benefit for another, are in direct contravention of DOE's long-standing policy to foster a competitive marketplace. DOE/FECM's Policy Guidelines, which have been held to be applicable to both exports and imports state:

> The market, not government, should determine the price and other contract terms of imported [or exported] natural gas … The federal government's primary responsibility in authorizing imports [or exports] will be to evaluate the need for the gas and whether the import [or export] arrangement will provide the gas on a competitively priced basis for the duration of the contract while minimizing regulatory impediments to a freely operating market.[75]

It belies the principles of fairness and free trade for DOE to interfere with legal business transactions that are permissible under U.S. law with active trading partners and allies, or to engage in policies that actively protect one industry to the detriment of another. Exports are critical to the balance of trade and the U.S. reaps myriad benefits from remaining an active participant in the international market. Protectionist responses to short-term price spikes have never proved effective and have produced disastrous results for the U.S. economy throughout history. The

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[73] *Policy Guidelines and Delegation Orders Relating to the Regulation of Imported Natural Gas,* 49 Fed. Reg. 6684 *(Feb. 22, 1984)* [hereinafter *Policy Guidelines*] at 6685 "In prior decisions, however, DOE/FE has identified a range of factors that it evaluates when reviewing an application for export authorization. These factors include economic impacts, international impacts, security of natural gas supply, and environmental impacts, among others." *DOE/FE Order No. 3282-C,* supra note 5, at 9.

[74] *Phillips Alaska Nat. Gas Corp. & Marathon Oil Co.*, Order Extending Authorization to Export Liquefied Natural Gas from Alaska, DOE/FE Opinion and Order No. 1473, at 14, FE Docket No. 96-99-LNG (Apr. 2, 1999).

[75] *Policy Guidelines* at 6685.

protectionist, self-interested approach proposed by IECA is antithetical to the U.S.'s free trade policies and should be summarily disregarded.

C. CONCLUSION

For the reasons detailed above, the Protests and the Deinhardt Comment should be rejected.

Respectfully submitted,

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FLNG Liquefaction, LLC
FLNG Liquefaction 2, LLC &
FLNG Liquefaction 3, LLC

Dated: December 22, 2021

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 these proceedings.

Dated at New York, N.Y., this 22nd day of December, 2021.

/s/ Dionne McCallum-George
Dionne McCallum-George
Executive Assistant on behalf of
Freeport LNG Expansion, L.P.
FLNG Liquefaction, LLC
FLNG Liquefaction 2, LLC &
FLNG Liquefaction 3, LLC

VERIFICATION

State of Texas)

County of Harris)

BEFORE ME, the undersigned authority, on this day personally appeared John Tobola, who, having been by me first duly sworn, on oath says: that he is duly authorized to make this Verification; 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 Tobola

SWORN TO AND SUBSCRIBED before me on the 22nd day of December, 2021.

Name: Michelle Huntley

Title: Notary Public

My Commission expires:

04/22/2023

MICHELLE LYN HUNTLEY
Notary ID 130199890
My Commission 4/22/2023