

# BAKER BOTTS LLP

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July 15, 2014

Submitted electronically to fergas@hq.doe.gov

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Ms. Larine A. Moore  
Docket Room Manager  
FE-34  
U.S. Department of Energy  
P.O. Box 44375  
Washington, DC 20026-4375

Re: Application of Techgen S.A. de C.V. for Long-Term Authorization to Export  
Natural Gas by Pipeline to Mexico  
FE Docket No. 14- ~~94~~ -NG

Dear Ms. Moore,

Techgen S.A. de C.V. (“Techgen”) hereby submits for filing with the U.S. Department of Energy, Office of Fossil Energy (“DOE/FE”) an application for long-term authorization to export natural gas by pipeline to Mexico (“Application”) in an amount up to the equivalent of 56.2 billion standard cubic feet of natural gas per year. Techgen is transmitting a PDF of the application materials electronically and, on the same day, hard copies of the application materials provided electronically. The hand delivered submission will include a paper copy of the Application, a paper copy and an electronic media version of confidential agreements submitted under seal, and a check in the amount of \$50.00 made payable to the Treasurer of the United States. A photocopy of the check is included with the electronic submission.

To support its Application, Techgen is providing copies of its long-term gas transportation agreements. Due to the sensitive commercial information contained within these agreements, Techgen is submitting them to the DOE/FE on a confidential basis, under seal, pursuant to 10 C.F.R. § 590.202(e). These agreements and the information they contain should be afforded confidential treatment and exempted from public disclosure because they (1) have been held in confidence by the counterparties, (2) are of a type customarily held in confidence, (3) are being transmitted to DOE/FE in confidence, (4) are not publicly available, and, (5) if disclosed, may cause substantial harm to the competitive positions of the parties to the agreement. See 10 C.F.R. § 590.1004.11(f).

July 15, 2014

Please acknowledge receipt of this Application by email to [jessica.fore@bakerbotts.com](mailto:jessica.fore@bakerbotts.com). Should you have any questions, please do not hesitate to contact me at (202) 639-7727 or Kyle Wamstad at (202) 639-7774.

Respectfully,

*/s/ Jessica Fore*

Jessica Fore  
*Counsel for Techgen S.A. de C.V.*

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

**In the matter of:**

**Techgen S.A. de C.V.**

)

**Docket No. 14- 94 -NG**

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**APPLICATION FOR LONG-TERM AUTHORIZATION  
TO EXPORT NATURAL GAS TO MEXICO**

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Communications regarding this application should be directed to:

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

**In the matter of:**

**Techgen S.A. de C.V.**

)

**Docket No. 14-\_\_\_\_-NG**

**APPLICATION FOR LONG-TERM AUTHORIZATION  
TO EXPORT NATURAL GAS TO MEXICO**

Pursuant to Section 3 of the Natural Gas Act (“NGA”)<sup>1</sup> and Part 590 of the Department of Energy’s (“DOE”) regulations,<sup>2</sup> Techgen S.A. de C.V. (“Techgen”) respectfully requests that the DOE, Office of Fossil Energy (“DOE/FE”) issue an order granting Techgen long-term authorization to export to Mexico up to 56.2 billion cubic feet (“Bcf”) per year of natural gas for a 20-year term to commence on the earlier of the date of first commercial export or a date 3 years from the issuance of an order granting the requested authorization.

Under NGA Section 3(c), “the exportation of natural gas to a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, shall be deemed to be consistent with the public interest[.]”<sup>3</sup> Because the United States has in effect a Free Trade Agreement (“FTA”) with Mexico requiring national treatment for trade in natural gas, DOE/FE has found the export of natural gas to Mexico to be in the public interest.<sup>4</sup>

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<sup>1</sup> 15 U.S.C. § 717b.

<sup>2</sup> 10 C.F.R. Part 590.

<sup>3</sup> 15 U.S.C. § 717b(c).

<sup>4</sup> See *Energia Chihuahua, S.A. de C.V.*, DOE/FE Docket No. 13-120-NG, Order No. 3348 at 3 (Oct. 24, 2013) (finding authorization request “to export natural gas to Mexico, a nation with which a free trade agreement is in effect, meets the section 3(c) criterion and, therefore, is consistent with the public interest.”).

## I. COMMUNICATIONS

Communications regarding this application should be directed to:

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To the extent necessary, Techgen requests waiver of 10 C.F.R. § 590.202(a) to allow each of the persons listed above to be named to the official service list.

## II. APPLICANT

The exact legal name of Techgen, the applicant, is Techgen S.A. de C.V. Techgen is a privately held stock company established, under Mexican laws on March 12, 2012, as a *sociedad anónima de capital variable*,<sup>5</sup> with the purpose of developing, constructing, owning, and operating a natural gas-fired, combined cycle power plant with an output capacity of approximately 900 megawatts (“MW”). Direct ownership interests in Techgen are held primarily by three companies: approximately 30 percent by Tecpower, S.A. (“Tecpower”), 22 percent by Tenaris Investments Switzerland AG (“Tenaris AG”), and 48 percent by Ternium Internacional España S.L. (Unipersonal) (“Ternium España”).

In addition, the following affiliates of the above listed shareholders each hold one share of stock in Techgen, enabling them to qualify under Mexican law as potential consumers of the power generated by the project: Ternium México, S.A. de C.V.; Tubos de Acero de México, S.A.; Servicios Integrales Nova de Monterrey, S.A. de C.V.; Consorcio Minero Benito Juárez Peña Colorada, S.A. de C.V.; Tenigal, S. de R.L. de C.V.; Las Encinas, S.A. de C.V.; Servicios

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<sup>5</sup> A *sociedad anónima de capital variable* is similar in corporate form to a privately held stock corporation.

Industriales de Procesamiento Serinpro, S.A. de C.V.; Autoabastecedora de Gas Natural Bruno Pagliai, S.A. de C.V.; and Tamser, S.A. de C.V.

Tecpower is a wholly owned subsidiary of Tecpetrol International S.A. (“Tecpetrol”). Tecpetrol is a privately held oil and gas exploration company with activities focused in the Americas.

Tenaris AG is an indirect, wholly owned subsidiary of Tenaris S.A. (“Tenaris”). Tenaris manufactures pipes and tubing for oil and gas and manufacturing industries worldwide. A public company incorporated in Luxembourg, Tenaris is listed on exchanges in Italy, Argentina, Mexico, and, as American Depositary Securities, on the New York Stock Exchange.

Ternium España is an indirect, wholly owned subsidiary of Ternium S.A. (“Ternium”). Ternium is a steel producer that supplies products to the construction, home appliance, capital goods, container, food, energy, and automotive industries internationally, and is a public company with shares listed on the New York Stock Exchange.

Each of the interest-owning entities Tecpetrol, Tenaris and Ternium are companies of the Techint Group Companies ([www.techintgroup.com](http://www.techintgroup.com)).

### **III. PROJECT DESCRIPTION**

Techgen intends to develop a natural gas-fired, combined cycle power plant with an output capacity of approximately 900 MW in the Pesquería area of the State of Nuevo León, in Mexico. Techgen has obtained a permit from the Mexican Comisión Reguladora de Energía in accordance with Mexico’s Electrical Energy Public Service Law and its Regulations, in order to generate electrical power under the self-supply modality, which allows Techgen to generate power for purposes of satisfying the electrical power needs of its shareholders. Construction for the project began in March 2014 with testing scheduled to occur between September 2015 and

September 2016 (“Commissioning Period”). The planned in-service date for the power plant is September 2016.

Techgen plans on executing long-term power supply agreements with two of its shareholders (who are, in turn, affiliates of Tenaris and Ternium). Under those power supply agreements, Techgen would commit to provide approximately 900 MW and ancillary services over a 20-year period to the manufacturing facilities of those shareholders once the project is placed in service. In the first agreement, Techgen will agree to provide power to an affiliate of Ternium—Ternium Mexico S.A. de C.V.—under certain terms and conditions that must still be finalized by the audit committee of Ternium’s board of directors (the “Ternium Power Supply Agreement”). Pursuant to the Ternium Power Supply Agreement, Ternium Mexico S.A. de C.V. shall purchase, on a take-or-pay basis, in the aggregate, 78 percent of Techgen’s total firm energy generation as of the project completion date. In the second agreement, Techgen will agree with Tenaris to enter into a power supply agreement with an affiliate of Tenaris, Tubos de Acero de Mexico S.A., under certain terms and conditions that must still be finalized by the audit committee of Tenaris’ board of directors (the “Tenaris Power Supply Agreement” and, with the Ternium Power Supply Agreement, the “PS Agreements”). Pursuant to the Tenaris Power Supply Agreement, Tubos de Acero de Mexico S.A. shall purchase, on a take-or-pay basis, in the aggregate, 22 percent of Techgen’s total firm energy generation as of the project completion date. In accordance with the regulations of the DOE,<sup>6</sup> Techgen will file under seal confidential versions of the PS Agreements once they are executed.

Operation of the facility will require up to 150,000 million British Thermal Units (“MMBtu”) per day of natural gas, equivalent to approximately 154,000 thousand cubic feet

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<sup>6</sup> DOE’s regulations afford confidential treatment for the filing of documents that contain sensitive, commercial information. See 10 C.F.R. §§ 590.202(e) and 1004.11.

(“Mcf”) per day.<sup>7</sup> Projected over a year, the requested export volumes of natural gas are approximately 54,750,000 MMBtu and 56,154,000 Mcf.

#### **IV. FUEL SOURCE**

Natural gas for the project will be produced in the United States and will be exported to the plant pursuant to applicable DOE/FE authorizations. Although Techgen plans on supplying the power plant with U.S.-sourced natural gas throughout the duration of the 20-year term of the PS Agreements, it does not intend to—and largely is not able to due to unavailability—enter into any long-term supply agreements that would remain in force for the duration of the 20-year term. Techgen is in the process of negotiating supply agreements of various durations with natural gas producers in the Eagle-Ford and other production areas in Texas for a significant part of the project’s fuel needs. Consistent with other recent export authorization applicants,<sup>8</sup> Techgen may also supply a substantial part of the project fuel through short-term agreements and spot market purchases. Maintaining this flexibility to acquire natural gas from multiple producers on different terms will allow Techgen to access a diversity of gas supplies on economic terms, which will help ensure the viability of the project over the duration of the long-term authorization. In addition, Techgen would acquire specific volumes of natural gas for testing of the plant during the Commissioning Period.

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<sup>7</sup> Conversion from MMBtu to Mcf is based on a heat content of 975 Btu per cubic foot, which is the lower heating value guaranteed under natural gas transportation service agreements entered into by Techgen.

<sup>8</sup> See, e.g., *Freeport LNG Expansion, LP*, DOE/FE Docket No. 10-161-LNG, Order No. 3282 at 11 (May 17, 2013) (“FLEX states that, although some of the proposed export supply may be secured through long-term contracts, it expects to draw large volumes of natural gas for itself and for its LTA customers from the spot market.”); *Sabine Pass Liquefaction, LLC*, DOE/FE Docket No. 13-42-LNG, Order No. 3307 at 5 (Jul. 12, 2013) (“SPL notes that this supply can be sourced in large volumes in the spot market, or else pursued under long-term arrangements.”); *Venture Global LNG, LLC*, DOE/FE Docket No. 13-69-LNG, Order No. 3345 at 5-6 (Sept. 27, 2013) (“Venture Global states that this supply may be sourced in requisite volumes in the spot market or pursued under long-term arrangements.”).



As of the date of this application, Techgen has not entered into any long-term natural gas supply agreements with producers or marketers. Consistent with DOE/FE policy,<sup>9</sup> Techgen agrees to file with DOE/FE, under seal, all executed long-term supply agreements associated with the export of natural gas under this authorization, within 30 days of execution.

Techgen entered into a 20-year transportation services agreement with Kinder Morgan Texas Pipeline LLC, Kinder Morgan Tejas Pipeline LLC, and, as amended, Kinder Morgan Border Pipeline LLC (together, “KM Texas”) for firm capacity on their pipeline systems to transport up to 150,000 MMBtu per day of natural gas from production areas in Texas and across the U.S.-Mexico border at a single export point approximately 4 miles south of the town of Salineño, in Starr County, Texas (the “KM Texas GTA”). Techgen also entered into a complementary 20-year transportation services agreement to transport natural gas from the U.S.-Mexico border to the plant site in Nuevo León on the Mier-Monterrey Pipeline system of an affiliate of KM Texas, Kinder Morgan Gas Natural de Mexico, S. de R.L. de C.V. (the “KM Mexico GTA,” together with KM Texas GTA, the “KM GTAs”). The KM Texas pipeline systems are intrastate pipelines regulated by the Railroad Commission of Texas while the Mier-Monterrey Pipeline system is regulated by Comisión Reguladora de Energía. Both KM GTAs are 20-year transportation services agreements commencing on June 1, 2016. During the Commissioning Period (*i.e.*, prior to commencement of the 20-year transportation services agreement), Techgen will transport natural gas on the same pipeline facilities pursuant to short-term firm transportation service agreements.

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<sup>9</sup> See *Jordan Cove LNG L.P.*, DOE/FE Docket No. 13-141-NG, Order No. 3412 at 10 (Mar. 18, 2014) (conditioning order on applicant filing any relevant long-term commercial agreements for the import of natural gas).

Consistent with DOE's regulations at 10 C.F.R. §§ 590.202(e) and 1004.11, Techgen is filing confidential versions of the KM GTAs under seal due to the sensitive commercial terms contained in those agreements.

## **V. REQUESTED AUTHORIZATION**

Techgen requests long-term authorization to export to Mexico, on its own behalf, up to 56.2 Bcf per year of natural gas for a 20-year term commencing on the earlier of the date of first commercial export or a date three years from the issuance of an order granting the requested authorization. The requested volume of 56.2 Bcf per year of natural gas is derived from the calculated volume of fuel required to operate the proposed output capacity of 900 MW, or 150,000 MMBtu per day. A 20-year term for the export authorization would run concurrently with the proposed PS Agreements and KM GTAs. While a long-term authorization need not be limited by the terms of associated long-term agreements,<sup>10</sup> the 20-year authorization term requested here is fully consistent with Techgen's 20-year firm transportation service agreements and, once executed, the PS Agreements.

Techgen requests commencement of the long-term authorization on the earlier of the date of first commercial export or three years from the issuance of an order by DOE/FE granting the requested authorization so that Techgen may meet certain project milestones while preserving sufficient lead time to complete construction of the plant, commission it, and place it in service.<sup>11</sup> For purposes of the long-term export authorization, the date of first commercial export will be after completion of commissioning and testing of the power plant and will coincide with the effective start date of the PS Agreements.

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<sup>10</sup> See *SB Power Solutions Inc.*, DOE/FE Docket No. 12-50-LNG, Order No. 3105 (Jun. 15, 2012) (granting 25-year authorization without coextensive long-term agreements).

<sup>11</sup> See *Cameron LNG, LLC*, DOE/FE Docket No. 11-162-LNG, Order No. 3391 at Ordering Par. A (Feb. 11, 2014) (granting authorization "for a term of 20 years to commence on the earlier of the date of first commercial export or seven years from the date that this Order is issued.").

In addition to this long-term authorization application, Techgen plans to submit an application for a short-term authorization with DOE/FE to export a specific amount of natural gas from the United States to the plant during the Commissioning Period. The term of the short-term authorization will precede the commencement date of the long-term authorization requested in this application.<sup>12</sup> In compliance with DOE/FE policy, natural gas exported under a short-term authorization will not be obtained pursuant to an agreement longer than two years in duration. Techgen does not have any existing DOE/FE long-term or short-term authorizations and is not aware of any other related matters being considered by the DOE/FE or the Federal Energy Regulatory Commission (“FERC”).

## **VI. PUBLIC INTEREST**

The requested long-term authorization to export natural gas to Mexico is consistent with the public interest. Section 3(a) of the NGA requires that the DOE/FE authorize natural gas exports unless “it finds that the proposed exportation . . . will not be consistent with the public interest.”<sup>13</sup> Under NGA Section 3(c), “the exportation of natural gas to a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, shall be deemed to be consistent with the public interest” and applications for such exportation “shall be granted without modification or delay.”<sup>14</sup> The United States has in effect an FTA with Mexico requiring national treatment for trade in natural gas. Therefore, exports to Mexico, as proposed herein, are deemed consistent with the public interest.<sup>15</sup>

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<sup>12</sup> See *Freeport LNG Expansion, L.P., et al.*, DOE/FE Docket No. 10-161-LNG, Order No. 3282-B at 6 (Jun. 6, 2014) (“FLEX will be permitted to apply for short-term authorizations to export Commissioning Volumes prior to the commencement of the first commercial exports[.]”).

<sup>13</sup> 15 U.S.C. § 717b(a).

<sup>14</sup> *Id.* § 717b(c).

<sup>15</sup> See *Energia Chichuahua, S.A. de C.V.*, DOE/FE Docket No. 13-120-NG, Order No. 3348 at 3 (Oct. 24, 2013) (finding authorization request “to export natural gas to Mexico, a nation with which a free trade agreement is in effect, meets the section 3(c) criterion and, therefore, is consistent with the public interest.”).

## **VII. ENVIRONMENTAL IMPACT**

Granting the long-term authorization will have limited environmental impacts. Transportation of natural gas within the United States, across the U.S.-Mexican border, and within Mexico will occur over existing pipeline facilities operated by KM Texas or its Mexican affiliate. The KM Texas border facilities were originally authorized by order of the FERC in 1996<sup>16</sup> and this authorization was most recently amended in 2013 to reflect expanded capacity.<sup>17</sup> The only newly constructed pipeline facilities associated with the proposed project will be relatively short plant lines in Mexico to connect the plant to existing pipeline infrastructure.

## **VIII. APPENDICES AND ENCLOSURES**

Accompanying this application, Techgen has included the following appendices in compliance with the DOE's regulations and in support of the requested authorization:

Appendix A	Verifications of Authorized Representatives <sup>18</sup>
Appendix B	Opinion of Counsel
Appendix C	Confidential versions of KM GTAs <i>Filed under seal pursuant to 10 C.F.R. § 590.202(e).</i>
Appendix D	Certification of Baker Botts

Techgen will send under separate cover Appendix C and a check payable to Treasurer of the United States in the amount of US \$50 (fifty dollars) to cover the application filing fee.

## **IX. CONCLUSION**

WHEREFORE, because export of natural gas to Mexico is deemed to be consistent with the public interest under NGA Section 3(c), Techgen respectfully asks that

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<sup>16</sup> See *MidCon Texas Pipeline Corp.*, 77 FERC ¶ 61,205 (1996).

<sup>17</sup> See *Kinder Morgan Texas Pipeline LLC*, 143 FERC ¶ 61,245 (2013) (amending a presidential permit and NGA Section 3 authorization for the border facilities, allowing for an increase in throughput to 700,000 Mcf per day).

<sup>18</sup> Techgen requires two company representatives to sign verification statements.

DOE/FE issue without modification or delay an order granting the requested long-term authorization to export up to 56.2 Bcf per year of natural gas to Mexico for a 20-year term commencing on the earlier of the date of first commercial export or three years from the issuance of an order granting the requested authorization.

Respectfully submitted,

/s/ Jessica Fore  
Jessica Fore  
Baker Botts L.L.P.  
*Counsel for Techgen S.A. de C.V.*

Dated: July 15, 2014

**APPENDIX A**

**VERIFICATIONS**

VERIFICATION

Nuevo Leon, Mexico

Pursuant to 10 C.F.R. § 590.103(b) (2014), I, Omar Humberto Fernandez, state that I am General Project Manager for Techgen S.A. de C.V.; that I am duly authorized to execute this verification; that I have read the foregoing document and I am familiar with the contents thereof; and that I affirm all statements of facts therein are true and correct to the best of my knowledge, information, and belief.



Omar Humberto Fernandez  
*On behalf of*  
Techgen S.A. de C.V.

Date: Jun 16, 2014



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7/15/14

Techgen S.A. de C.V.

Docket No. 14-\_\_\_\_-NG

**VERIFICATION**

Nuevo Leon, Mexico

Pursuant to 10 C.F.R. § 590.103(b) (2014), I, Ricardo Miguel Markous, state that I am Chief Executive Officer for Techgen S.A. de C.V.; that I am duly authorized to execute this verification; that I have read the foregoing document and I am familiar with the contents thereof; and that I affirm all statements of facts therein are true and correct to the best of my knowledge, information, and belief.



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Ricardo Miguel Markous  
*On behalf of*  
Techgen S.A. de C.V.

Date: June 17, 2014



**APPENDIX B**

**OPINION OF COUNSEL**



López Velarde, Heftye  
y Soria

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June 16, 2014

Mr. John A. Anderson

U.S. Department of Energy  
Office of Fossil Energy  
Docket Room 3F-056, FE-50  
Forrestal Building  
1000 Independence Avenue SW  
Washington, D.C. 20585

Re: Techgen S.A. de C.V.  
Application for Long-Term Authorization to Export Natural Gas to Mexico  
DOE/FE Docket No. 14-\_\_\_\_-NG

Dear Mr. Anderson:

This opinion of counsel is furnished to you pursuant to Section 590.202(c)<sup>1</sup> of the Department of Energy Regulations as part of the application of Techgen S.A. de C.V. ("Techgen") for long-term authorization to export natural gas to Mexico ("Application"). As Mexican counsel for the applicant, we can confirm that: (i) Techgen is a *sociedad anónima de capital variable* established under Mexican laws on March 12, 2012, whose registered shareholders are Tecpower, S.A. (approximately 30 percent), Tenaris Investments Sitzerland AG (approximately 22 percent), and Ternium Internacional España S.L. (Unipersonal) (approximately 48 percent) and other nine companies (who hold, in the aggregate, approximately .00001 per cent), and (ii) the corporate purpose of Techgen includes the importation of natural gas to Mexico and the generation of electric power. In forming our opinion, we have reviewed and relied upon the formation documents, corporate books and other information provided to us by Techgen.

Based on the foregoing, and for the purposes of the Application to the Office of Fossil Energy, we are of the opinion that the proposed exports as described in the Application are within the corporate powers of Techgen.

Very truly yours,  
López Velarde, Heftye y Soria, S.C.

Rogelio López-Velarde  
Partner

<sup>1</sup> 10 C.F.R. § 590.202(c) (2014).

**APPENDIX C**

**CONFIDENTIAL KINDER MORGAN  
GAS TRANSPORTATION AGREEMENTS (GTAs)**

**Filed under seal pursuant to 10 C.F.R. § 590.202(e)**

**APPENDIX D**

**CERTIFIED STATEMENT**

**CERTIFIED STATEMENT OF AUTHORIZED REPRESENTATIVE**

Pursuant to 10 C.F.R. § 590.103(b) (2014), I, Jessica Fore, hereby certify that I am a duly authorized representative of Techgen S.A. de C.V., and that I am authorized to sign and file with the Department of Energy, Office of Fossil Energy, on behalf of Techgen S.A. de C.V., the foregoing document and in the above-captioned proceeding.

Dated at Washington, D.C., this 15th day of July, 2014.

*/s/ Jessica Fore* \_\_\_\_\_

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Baker Botts L.L.P.  
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