[redacted]

Attachments: SeaOne Summary of Request for Assistance 03 JAN 17.docx; Smith Letter_Transmittal_ 03 JAN 2017_FINAL.Fnl (2) (3).docx; Smith Memorandum 03 JAN 2017 FINAL (3).docx; SeaOne.Attachment A . Memorandum - Export Restrictions 10 August 16 (3).docx

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From: Gordon Arbuckle <gordona123@earthlink.net>
Sent: Tuesday, January 3, 2017 11:53:03 PM
To: Smith, Christopher A
Subject: SeaOne - Summary of Request for Assistance

Dear Assistant Secretary Smith:

Please see attached.

Sincerely,

Gordon Arbuckle
Counsel to SeaOne

SQUIRE PATTON BOGGS

Squire Patton Boggs (US) LLP
2550 M Street, NW
Washington, D.C. 20037

January 3, 2017

VIA E-MAIL

Mr. Christopher A. Smith
Assistant Secretary
U.S. Department of Energy Office of Fossil Energy
Docket Room 3F-056, FE-50
Forrestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585
Re: DOE/FE Docket No. 16-22-CGL

Dear Assistant Secretary Smith:

On December 23, SeaOne received a letter from the Office of Regulation and International Engagement /Office of Oil and Natural Gas (the "Office") responding to SeaOne's letter delivered to you on December 9, 2016. Unfortunately, the letter is yet another instance of a pattern of operations seemingly designed to slow walk the process, obstruct progress towards cleaner more sustainable energy economies in the Caribbean, and impede implementation of a promising new innovation for transporting fuels and feedstocks.

Although SeaOne reserves the right to appeal the decisions outlined in the letter, it is not doing so at this time. We are writing simply to make sure that you are fully informed of the long and unfortunate history of this proceeding, and that the information provides the clarity you need to address and resolve the problems, both administrative and legal, that the SeaOne team has worked in good faith to overcome, prior to your departure from the Department of Energy's Office of Fossil Energy.

As you know, SeaOne's new Compressed Gas Liquid ("CGL") technology, for many applications, replaces old, inflexible, cumbersome and expensive technologies with a less costly, more flexible and less intrusive way of transporting and delivering hydrocarbon products. CGL's "custom blend" capability enables delivery of the full range of light petroleum products: from ethane -- for petrochemicals and plastics, to propane -- for home use and vehicle fuels -- to "richer," higher BTU blends of natural gas and NGLs - capable of use in currently existing power plant burners in most Caribbean countries.

In addition to realizing very substantial savings in fuel costs over the longer term, CGL can reduce overall operating costs and extend the operating lives of many existing power plants, saving billions of dollars in capital costs. The inherent flexibility of the CGL process also

offers great potential for resolution of problems, such as the need for flaring and lack of liquid transportation and storage capacity, arising here at home due to the fact that the current technologies for transporting gas and gas liquids are inflexible and incapable of responding effectively to availability and market needs.

SeaOne's technology is not only far less expensive but also more environmentally sustainable than any comparable alternative. It has a smaller footprint, is typically installed in existing industrial areas, produces minimal air emissions or water discharges, is typically transported in small, shallow draft vessels which do not require dredging at either the point of shipment or receiving ports and involves far less risk of accident, thus enabling more flexibility and fewer restrictions in Waterway Suitability determinations.

As demonstrated by the detailed analysis attached to this letter, the record in this case, as it currently stands, provides a compelling argument for proponents of regulatory reform.

As the analysis clearly shows, *the Office's staff, having failed to state its position or present evidence at the appropriate time (i.e. prior to closing of the record) and having failed to reopen the record through acceptance of a late, irrelevant and improperly submitted comment as an intervention, is now seeking again to reopen the matter through a spurious reference to NEPA. SeaOne's application should have been granted, without question, in June of 2016 at the latest. Continued delay is both illegal and unconscionable.*

Those who are being hurt by this regulatory intransigence include not only SeaOne, but, more importantly, the Caribbean countries that need CGL and, in particular, those which have made commitment to some of the uneconomic other energy projects which have been torturously structured to get to the front of the line in the facility approval process. The following points must be addressed immediately.

First, while it is arguable that the Office was not legally required to engage in meaningful discussions as to which gas/gas liquid mixtures should be considered jurisdictional "natural gas" under the NGA, it is not unreasonable to expect such discussions from an agency whose mission includes promotion of sustainable and innovative energy technologies. The Office has refused to engage in such discussions.

Second, it is beyond argument that the Office owes applicants and their potential customers rigorous adherence to the requirements of the NGA and DOE's regulations thereunder. It is clear that when the record provides no evidence to support conditions or a finding of inconsistency, the authorization must be issued without condition or delay. In this case, the Office has taken over two years to process uncontested applications. The Office, using extra-legal means, has attempted to generate a contest where none has existed, and it has refused to follow clear statutory mandates to issue licenses immediately when there is no contest or no basis in the record for a finding that approval would be "inconsistent with the public interest."

Third, the Office has refused, without giving any significant reason, to accept the Corps of Engineers' review of the Port of Gulfport's development plans -- a continuing and comprehensive environmental review process which has required the expenditure of some

millions of dollars in studies, analyses and mitigation efforts and has produced a level of review which is far superior to that which has been provided by the few environmental assessments which DOE has completed. It is unexplainable that the DOE environmental review process is not effectively coordinated with the environmental review processes of the many U.S. ports in which export facilities, especially smaller ones, might be located. Failure to accept conclusions of comprehensive environmental reviews conducted at the port level, which are at a much higher standard than the Environmental Assessment completed by DOE, is not only remarkably inefficient and wasteful and an impediment to development at ports throughout the country, but the dismissal of a far superior environmental review also raises the question of personal staff bias against a particular American company.

Fourth, licenses issued by DOE must be consistent with the U.S.' Treaty obligations and interpretations of existing license terms must be harmonized with that requirement. In this case, the Office, without notice or opportunity to comment, has included in SeaOne's license a provision which violates CAFTA and improperly restricts service to potential CGL customers which have critical needs for the product.

While we have little doubt that the incoming administration will eventually deal with these issues, we also believe that, at least at your level, there is good faith and a reasonable commitment to compliance with the law, advancement of DOE's mission and fulfillment of the commitments made by President Obama, Vice President Biden and Secretary Moniz to assist the Caribbean countries in the development of clean and economically sustainable energy economies,

It is not too late for the initiation of action by you to recommit DOE/FE to demonstrate that reasonable commitment to those same goals, most importantly your office of Fossil Energy's staff compliance with the rule of law and due process, and, in so doing to advance our nation's firm commitments to the Caribbean. The steps to be taken should include:

1. Immediate initiation of discussions with SeaOne and relevant Congressional leaders to arrive at an appropriate definition of "natural gas unmixed" and agree upon an appropriate legislative or administrative mechanism for adoption of that definition.
2. Issuance of an immediate directive to the Office that expeditious processing of applications is required and, in the absence of contrary evidence properly submitted in the record, requested authorizations must be issued without condition or delay and immediate grant of SeaOne's application.
3. Issuance of an immediate directive that environmental review conducted by ports must be given "full faith and credit" in all DOE decisions.
4. Immediate resolution of inconsistencies between SeaOne's license and the U.S.' Treaty obligations.

We regret the need to share this candid assessment of the Office's actions in this proceeding but hope that you will see fit to address these issues, thus correcting the failure to honor U.S. commitments to Caribbean countries and end the adverse impacts that SeaOne's customers are suffering as a result of the Office's failure to fulfill its duties.

Your consideration of these critical issues is greatly appreciated.

Sincerely,

J. Gordon Arbuckle
Counsel to SeaOne

John R. Sharp
Senior Attorney

Memorandum

To: Christopher A. Smith
Assistant Secretary for Fossil Fuels
U.S. Department of Energy

Re: SeaOne Gulfport LLC's Detailed Analysis in Support of Letter of January 3, 2017

Date: January 3, 2017

On December 23rd, SeaOne received a letter from the Office of Regulation and International Engagement/Office of Oil and Natural Gas (the "Office") responding to SeaOne's letter delivered to you on December 9, 2016. We provide the timeline below to support our letter of January 3, 2017.

The History of SeaOne's Efforts

SeaOne's engagement with the Office commenced in the summer of 2013 with an informal meeting seeking guidance regarding the scope of DOE/FE's jurisdiction over CGL and the requirements for a grant of authority to export the product to FTA and non-FTA countries in the Caribbean. At that time, SeaOne was advised to engage with FERC to determine the need for facility approval under Section 303 (e) of the Natural Gas Act.

In the following months, SeaOne engaged in extensive discussions with FERC staff. Based on those discussions and careful analysis of precedents, SeaOne concluded that, under the laws and regulations administered by FERC, CGL is not LNG and SeaOne's production facility, when producing CGL with an HHV of more than 1200 Btu/scf, is neither an LNG plant under section 3 (e) nor a natural gas export facility subject to either section 3 or section 7 of the Natural Gas Act.

In September 2013, following that consultation, SeaOne again sought guidance from the Office as to which CGL exports should be considered to constitute exports of natural gas requiring DOE authorization under section 3 of the Natural Gas Act.

Since the DOE Office would not provide meaningful guidance, SeaOne, out of an abundance of caution, conceded DOE jurisdiction over use of the CGL process for the primary purpose of exporting conventional natural gas (gas with an HHV of 1100 Btu/scf or less), and, on June 3, 2014 filed an application for authority to export to FTA countries.

On December 2, 2014, some six months later, the Office, citing its obligation to issue authorizations "without condition or delay" issued an authorization to export 1.5 Bcf per day of "natural gas contained in CGL" to FTA countries in the Caribbean.

The Order granting the authorization was silent on the issue of whether the Office would assert jurisdiction over CGL exported for the primary purpose of delivering gas liquids, high Btu gas/gas liquid mixtures or non-jurisdictional vehicle fuels. Further, without the prior notice to SeaOne required by DOE's regulations, and without any basis in the record, the authorization included a prohibition on re-export to non-FTA countries which, unless narrowly construed, violates the CAFTA treaty (See the analysis in attachment A).

Due to the continued lack of clarity as to what CGL formulations and applications involved jurisdictional exports, SeaOne, on September 29, 2015, filed an application for authority to send up to 1.0 Bcf/day of its 1.5 Bcf/day FTA authorization to non-FTA countries in the Caribbean. The application clearly stated that the Gulfport facility would be constructed in order to serve U.S. Territories and FTA countries whether or not the non-FTA authorization was granted.

Nearly five months later, in early February of 2016, SeaOne received, by telephone, additional questions from the Office's Counsel, and immediately provided additional detailed information regarding the site and design of the facility and the composition of the CGL formulations reasonably capable of use to deliver natural gas to end users.

The Office finally docketed SeaOne's Non-FTA Application on March 4, 2016, nearly six months after the filing date.

On April 18, 2016, an additional 33 days after the filing date, the Office finally published a Federal Register notice inviting comments and/or interventions in the proceeding for grant of non-FTA export authority. The notice required the maximum time allowed (sixty days) for interventions or submission of opposing comments. It also erroneously characterized the application as one for "Authorization to Export Liquefied Natural Gas."

On that same day, SeaOne filed comments correcting the DOE's incorrect Federal Register classification of CGL as LNG and, again, made clear that the facility would be constructed with or without non-FTA authorization and confirming that it is not seeking authorization to export additional natural gas, but only to ship a portion of the amount previously authorized to non-FTA countries.

The comment period closed on June 17, 2016 with no adverse comments having been received and no evidence having been submitted to address either the representations in SeaOne's application that the Gulfport facility would be constructed whether or not the non-FTA authorization was issued or that the CGL process, in many, if not most instances, will be used to deliver non jurisdictional gas/gas liquid mixtures rather than conventional natural gas.

After the comment period closed without any intervention, opposition or submission of adverse comments, the Office attempted to recognize one late, marginally related, but irrelevant comment submitted through the Regulations.gov website, as an "intervention" in the SeaOne Non-FTA Application docket, and thereby declared the case a "contested proceeding" under DOE procedures. Even were DOE's position on that "intervention" correct,

which SeaOne established that it was not, the comment offered nothing of substance related to CGL or the only issue before the Office, whether shifting the already authorized exports from FTA countries to Non-FTA countries would be "inconsistent with the public interest."

On August 5, 2016, SeaOne filed with the Office a Motion for Opinion and Order on Application noting that there had been no interventions or protests properly filed in the docket and no request by a party for additional proceedings and requesting that the Assistant Secretary issue a final opinion and order on the basis of the official record – as required by the NGA and DOE's regulations.

The Office did not respond to SeaOne's motion and did not, as required by the applicable regulations, advise SeaOne of any issues of concern which might lead to denial of the application nor did it provide SeaOne with an opportunity to address those issues.

Between August 5 and September 6, 2016, the two Mississippi Senators, the Governor of Mississippi and the Congressman representing the Gulfport area sent letters to the Office seeking immediate decision on SeaOne's application.

Since no decision had been issued, SeaOne, on October 7, 2016, filed a Petition for Agency Action in Conformity with Statutory Requirements. The Petition pointed out and reiterated the facts that the Gulfport facility will be constructed whether or not non-FTA authorization is issued and that "no one, including DOE/FE, has questioned SeaOne's assertion that approval of 16-22-CGL will have no environmental impact."

On October 17, 2016, over a year after SeaOne's application was filed, the Office finally issued a ruling. Based on its refusal to accept the statutory definition of natural gas ("Natural Gas means natural gas unmixed..") and interpretation of information in the technical appendix to SeaOne's application indicating that CGL *is capable* of being used to deliver conventional natural gas, the ruling rejected SeaOne's evidence that most CGL shipments would be for the purpose of delivering high Btu mixtures, NGLs and non-jurisdictional vehicle fuels and, without further justification or opportunity to respond, asserted jurisdiction over all CGL formulations containing methane.

Further, the ruling asserted that there is insufficient evidence to support a finding that the facility will be constructed whether or not non-FTA authorization is issued and, accordingly, concluded that the Office must complete an environmental review of the Gulfport Facility prior to authorizing exports to non-FTA countries.

On December 9, 2016, SeaOne delivered to the Assistant Secretary for Fossil Energy a letter 1) pointing out that, based on the state of the record in this case, DOE's decision is non–discretionary and thus is categorically excluded from environmental review requirements under DOE's regulations, 2) submitting additional evidence supporting the position that the facility will be constructed with or without non-FTA authorization, and 3) pointing out that, even if environmental review is required, such review has already been completed by the Corps of Engineers in connection with its continuing environmental review of Port of Gulfport

activities, including construction and operation of Terminal 4, in which the Gulfport Facilities will be located.

On December 23, 2016, the Office sent to SeaOne a letter stating 1) that DOE's decision is discretionary because the NGA "expressly requires DOE to find that the proposed export of natural gas to non-FTA countries is not inconsistent with the public interest." 2) no new evidence has been submitted to demonstrate that the Facility will be constructed with or without non-FTA authorization and 3) SeaOne has not submitted sufficient information on the proposed facility to permit DOE to conclude that further NEPA review is not required. (In fact, SeaOne's project had been reviewed by the Port and the Mississippi Department of Environmental Quality and both had determined that no additional environmental permits were required and no further environmental review was needed.)

The Office's actions in this matter have been inconsistent with the Natural Gas Act and applicable DOE regulations and contrary to fundamental principles of administrative due process.

The delays and machinations outlined above demonstrate that, from the outset, the Office's predisposition has been to slow-walk, delay and eventually deny SeaOne's application. This predisposition, and the Office's disregard for the Natural Gas Act and its clear obligations thereunder is even more clearly demonstrated by the December 23, 2016 letter's assertion that:

> . . . Section 3(a) of the NGA . . . expressly requires DOE to find that the proposed export of natural gas to non-FTA countries is not inconsistent with the public interest

The clear, profound, and possibly intentional misunderstanding of the Act which this statement suggests has apparently pervasively affected the Office's treatment of SeaOne's application and has deprived SeaOne of its right to due process under the Act and DOE's regulations thereunder.

In fact, the relevant language of the Act reads as follows:

> The Commission shall issue such order [authorizing export of natural gas] *on application*, unless, after opportunity for hearing, it finds that the proposed exportation . . . *will not be consistent* with the public interest. [emphasis added]

Thus, contrary to the Office's assertion, the Act does not require a finding that a proposed export is "not inconsistent with the public interest" in order to grant a license. In fact, the opposite is true – *the Act requires that the authorization must be granted unless DOE makes an affirmative finding based on evidence in the record and after opportunity for a hearing, that the proposed export will not be consistent with the public interest.*

In other words, in order to justify a failure to grant an application for export authorization, DOE must *affirmatively find* a negative -- that the authorization requested is "will not be

consistent with the public interest." In its December 23 letter, the Office acknowledges that "there is a rebuttable presumption in section 3(a) proceedings *that a proposed export is consistent with the public interest*," but asserts that "this finding is not automatic, unlike the requirements for applications for FTA export authority under NGA section 3(c), but must be based on a thorough examination of the record."

Thus, the Office appears to assert that notwithstanding the Act's mandate for a decision "on application", the rebuttable presumption of consistency, and a "record" devoid of a single shred of evidence that allowing the already authorized exports to be extended to Non-FTA countries would be inconsistent with the public interest, the Office has discretion to find that the grant of SeaOne's application would "not be consistent with the public interest." This position is, of course, contrary to the clear words of the Statute and without support in the Agency's regulations or any available precedent. There is simply no contrary evidence in the "record" that could provide the Office any basis to make a determination that the proposed export "will not be consistent with the public interest."

Even if there were some contrary information in the record prior to making a finding that export is not consistent with the public interest, the Office must offer the applicant an opportunity for a hearing and, under DOE's regulations, must act in accordance with the rules applicable to adjudicatory proceedings. Those regulations, of course, require that all decisions be based on information in the record and that all parties to the proceeding (in this case, SeaOne is the only party) be appraised of any information to be considered in support of the Agency's decision and offered an on the record opportunity to respond to it.

In this matter, none of this has been done. Instead, the Office continues to delay authorization by simply refusing to authorize export despite the fact that the Law and the Record make issuance, at this point, a non-discretionary ministerial act. As SeaOne has said many times, despite the Office's machinations, there is no evidence in the record to support a finding that the exports applied for are not consistent with the public interest. In the absence of such evidence, license issuance is non-discretionary. *See*, Sierra Club v. F.E.R.C., 827 F. 3d 36, 40-41 (D.C. Cir. 2016). The authorization must be issued immediately.

Apparently recognizing the error of its assertion that "public interest review" is necessary or authorized when the "record" is devoid of any information authorization to redirect already authorized exports will be inconsistent with the public interest, the Office asserts, in the December 23 letter, that "[i]ndependently of the public interest review required by the NGA, DOE must determine whether the proposed authorization is a major federal action that requires compliance with NEPA." However, as noted, the Office does not have discretion to deny the application, but is affirmatively required to issue it. Further, there is no basis in the record in this case to support any conclusion that conditions on the authorization are required.

DOE/FE has already authorized the volumetric exports applied for without the need for NEPA review. The December 23 letter offered no rational explanation as to why allowing a change

in the destination of an already authorized export suddenly constitutes a discretionary "major federal action" which requires compliance with NEPA.

When an application is unopposed and there is no adverse evidence in the record, the decision to grant authorization to ship to a non-FTA country is just as non-discretionary as an authorization to ship to an FTA country. It must be granted without condition or delay.

The Office's determination that the Gulfport Facility cannot be constructed without NFTA authorization is not supported by evidence in the record, and, in any case, is irrelevant.

In its original June 3, 2014, application to export CGL to FTA countries, SeaOne stated that its CGL facility would be constructed based solely on SeaOne's initial sales of CGL to the Dominican Republic, a FTA country. Neither DOE nor any other party ever questioned this statement, and indeed, subsequent events have proven that SeaOne fully intends to carry out these plans and is legally entitled to do so without any further authorization from DOE: SeaOne has received very significant investment, has a firm commitment with the Port of Gulfport to utilize new tenant space at the Port, Front End Engineering and Design ("FEED") for the entire project has been completed, and bidding is underway for construction of the facilities and marine transports. DOE's concern over SeaOne's ability to finance facility construction is both misplaced and irrelevant. Unlike the Deepwater Port Act, for example, nothing in the NGA authorizes DOE to consider or rule upon questions of financial viability particularly where, as here, there is nothing in the record to support any finding regarding that issue

SeaOne's application to DOE/FE for authority to export CGL to non-FTA countries, filed on September 18, 2015, again noted that NFTA authorization was not a prerequisite to construction of the Gulfport Facility. This statement was again unchallenged by either DOE/FE or any other party.

Despite a lengthy delay in publishing a Federal Register Notice inviting comments on the application and an extended time period for intervention or submission of comments or questions, neither DOE staff nor any other person raised any questions or concerns or submitted any evidence concerning the question of whether the Gulfport Facility would be constructed based on non-jurisdictional and/or previously authorized volumes. It was not until October 17, 2016, when DOE/FE issued Order 3905 -- over two years after SeaOne first described its business model to DOE/FE and over a year after the NFTA application was filed -- that the Department first raised doubts about construction of the Gulfport Facility as an alleged obstacle to acting on SeaOne's NFTA application, stating

> Even assuming that a decision on a non-FTA LNG export application would be eligible for a categorical exclusion on the grounds that authorized exports to FTA countries provide a sufficient commercial basis to finance and construct the proposed export facility (an issue we need not decide in this Order), SeaOne

> has provided no evidence that would allow DOE/FE to make that determination here. Indeed, SeaOne's most recent semi-annual report to DOE/FE on September 30, 2016 (submitted in compliance with its existing FTA authorization, see supra note 4) indicates that SeaOne has neither entered into contracts with buyers in FTA countries, nor made a final investment decision to construct the Gulfport Facility. These facts do not provide a basis to conclude that the Gulfport Facility will be constructed regardless of whether the pending non-FTA Application is granted.

It is first important to note that this issue is irrelevant to DOE/FE's obligation to act on SeaOne's application. As discussed above, DOE/FE is required to issue the requested authorization unless the application is inconsistent with the public interest. Nothing in the record supports such a conclusion, and DOE/FE, on which the burden of proof for such a finding lies, has no basis in the record for any assertion that the SeaOne project, which has received wide and well documented support and no opposition, is inconsistent with the public interest.

Second, in addition to the fact that the semi-annual reports are not included in the record of this matter, this statement from Order 3905 is factually incorrect, or at least deliberately misleading. The semiannual report referenced in the Order includes information describing exactly the progress that would be expected at this point on the project timeline, including completion of FEED, bidding for construction, contract negotiations for delivery of hydrocarbons to the Gulfport Facility, and negotiations with additional customers (beyond those already previously reflected in semiannual reporting). Finally, the assertion that SeaOne has not entered into contracts is particularly disingenuous, as SeaOne already has in place executed Heads of Agreements ("HOAs") for volumes well in excess of what is needed for the construction of the Gulfport Facility. HOAs are the appropriate form of contractual document for this stage in the project's timeline, and had DOE/FE timely raised this concern, SeaOne could have simply provided the information. Instead, SeaOne was blindsided by this unexpected allegation, which has had serious consequences for the company.

There is nothing in the record to support a conclusion that SeaOne's Gulfport Facility will not be built absent authorization to ship to NFTA countries, a concern that was never raised by DOE/FE, or any other party, in the 28 months since DOE/FE granted SeaOne's FTA application with no apparent concerns about the project, in the months during which the Office was processing SeaOne's non-FTA application, or during the notice and comment period for the application. To the contrary, the record does support a conclusion that the facility is sustainable based on shipments to U.S. territories and FTA countries, as SeaOne has, and can, continue to demonstrate. In any case, DOE has no authority to consider questions of financial capability in its decision on this particular issue.

Section 3 of the Natural Gas Act requires that "the DOE shall issue such order upon application." SeaOne's applications, a number of filings since the original application date

and evidence submitted in response to the Office's assertion, all advance and support the conclusion that non-FTA authorization is irrelevant to the question of whether the facility will be built. The facility is legally authorized, SeaOne has committed to build it and no party, including the Office, has submitted any evidence to the contrary. As noted above, the burden of disproof on this issue falls on DOE. That burden has not been carried.

The Office's determination that environmental review is required is unsupported by any evidence in the record. The December 23rd letter's determination that the Port of Gulfport's Environmental Review documents are inadequate to cover the SeaOne facility is inconsistent with the Office's prior rulings. In any case the issue is irrelevant since license issuance is nondiscretionary.

We note at the outset that DOE/FE's effort to connect the issuance of an order granting SeaOne's application for NFTA export authorization is not grounded in fact or law. Jurisdiction over natural gas import and export issues is divided between FERC and DOE. The Secretary of Energy has delegated to DOE/FE the responsibility for approving the actual import (including place of entry) and export (including place of departure) of gas – DOE/FE has no facility jurisdiction. To the extent that the federal government exercises jurisdiction over facilities associated with the import or export of natural gas, it is FERC that exercises that jurisdiction. FERC does not exercise jurisdiction over processing plants, even when they deliver conventional natural gas into interstate pipelines, nor has it exercised jurisdiction over the design, construction and siting of natural gas export terminal facilities except where a pipeline border crossing or an LNG terminal is involved. It is precisely because federal law provides only limited facility jurisdiction over LNG exports and imports that authority to regulate LNG terminals was provided in the Energy Policy Act of 2005. That authority is limited specifically to LNG terminals, which the Gulfport Facility is not.

NEPA is a procedural statute, not a substantive statute, and cannot convey substantive jurisdiction where an agency otherwise has no such jurisdiction. Where there is no evidence in the record suggesting a connection between the requested federal action --the issuance of the export authorization -- and the facility (over which DOE has no jurisdiction) then NEPA is inapplicable – there is no requirement (or authority) for an environmental review, the issuance of a CATEX, or even a negative declaration regarding NEPA.

Further, DOE/FE's conclusions, as reflected in Order 3905, reflect a continued fundamental misunderstanding of the nature of the CGL process in general, and of the Gulfport Facility. The Gulfport Facility consists of modular equipment to be installed on an existing industrial site, Terminal 4 at the Port of Gulfport, Mississippi. Terminal 4 has been the subject of intensive and recent environmental review, specifically the December 2010 Environmental Assessment and Environmental Review Record, Community Development Block Grant Disaster Recovery Project, 24-ACRE FILL, NEW TENANT TERMINALS AND INFRASTRUCTURE MISSISSIPPI STATE PORT AT GULFPORT, MISSISSIPPI prepared

for the Mississippi Development Authority ("MDA") by the Mississippi State Port at Gulfport (the "MSPA").

A finding of no significant impact ("FONSI") was issued pursuant to this EA, and, in reviewing the status of that finding as it pertains to the Gulfport Facility, the Director of the Port, in consultation with the Port's environmental consultants and the Mississippi Development Authority, has concluded that no additional action or modification of that EA or FONSI is necessary in order to address SeaOne's Terminal 4 activities.

The December 2010 EA was an update of a prior, even more extensive environmental review, covering Phase II of Department of the Army Permit No. MS96-02828-U for the 84-Acre Fill Project at the Port of Gulfport. This permit requires MSPA to perform a comprehensive and ongoing Mitigation Plan including, inter alia, the implementation of a comprehensive stormwater management plan for the Port, water quality enhancement features, restoration of wetlands, and a contribution of $1,000,000.00 to the Mississippi Department of Marine Resources (MDMR) Coastal Preserve acquisition program. The installation and operation of the Gulfport Facility has been deemed consistent with this Mitigation Plan, and will be covered by and in compliance with the Port's numerous federal permits (Stormwater Pollution Prevention Plan, Coastal Zone Management Act, etc.). Extensive review of the site has already been accomplished, including, inter alia, transportation, historic preservation, floodplain management, wetlands management, sole source aquifers, endangered or threatened species, wild and scenic rivers, air quality, farmland protection, and environmental justice. Again, the Director of the Port has concluded that SeaOne's installation and operation are consistent with these existing studies, the only possible conclusion as the Gulfport Facility consists of equipment to be installed in an existing terminal at the Port to serve a function that is within the scope of activities contemplated at the time the EA and FONSI were processed.

Additionally, in connection with the Port of Gulfport's continuous and intensive environmental review process, the Corps of Engineers, in late 2015, prepared a Draft EIS for the Port of Gulfport Expansion Project and, at that time saw no need to augment or supplement the EA or FONSI documents discussed above.

In its December 23rd letter, the Office concluded that the Corps' environmental review process provided

> . . . insufficient technical information concerning the proposed facility for us to conclude that . . . either of the concerned agencies examined with particularity the proposed operations involved in manufacturing CGL. . . .

In considering the propriety and good faith of this statement and the assertion that it is a reason for rejection of the Gulfport environmental review, it is instructive to review the only comparable DOE environmental assessment which we have been able to find - that prepared in connection with Emera CNG's construction and operation of a CNG facility at the Port of Palm Beach, Florida. This EA ultimately resulted in a FONSI.

It is important to note that the Emera proceeding (DOE/FE Docket No. 13-157-CNG), unlike the proceeding relating to SeaOne's NFTA application, was a contested proceeding. DOE/FE therefore had discretion to conduct a public interest review and, at least arguably, to require an environmental assessment in connection therewith. As noted above, the SeaOne proceeding is uncontested. There is no evidence in the record upon which to base a public interest review. Issuance of the requested authorization is non-discretionary and NEPA review is neither authorized nor required.

In addition, the following points of comparison between the two situations are particularly noteworthy:

1. Unlike the SeaOne docket, there is nothing in the Emera docket confirming that Emera's construction, installation or operations are covered by the Port's existing and ongoing environmental review. The extensive and continuous environmental review conducted at the Port of Gulfport is a materially different factor regarding any decision to conduct additional environmental review.
2. The Emera EA, perhaps because DOE/FE has no authority to regulate facility design, does not focus on "technical information concerning the proposed facility" but is instead focused on the sixteen environmental resource factors that were addressed, in much greater detail, by the Port of Gulfport's environmental review process.
3. Of the sixteen factors which the Emera EA found to be relevant, the Office found it necessary to discuss in detail only eight. The Gulfport review addressed all of the factors and supported discussions with extensive environmental studies.
4. The Emera EA is 167 pages in length. The Gulfport environmental review is a continuing process which has produced thousands of pages of analysis and has resulted in millions of dollars spent on research, studies and mitigation measures.
5. As noted above, the SeaOne facility involves installation of modular equipment on a terminal pad, the construction of which has been subjected to complete and extensive environmental review. The Gulfport Facility is expected to have a zero carbon footprint, uses no process water, produces no process effluents, requires no new fill or dredging activities, has no effect on flood plains or ground waters and requires no new state or federal environmental permit. Both the Port and the Mississippi Environmental authorities have concluded that no further review is required in connection with SeaOne's Gulfport Facility. Any suggestion that any assessment which the office might produce would in any way add to the breadth of the analysis that has already been conducted by the Corps and the Port of Gulfport is obviously incorrect.
6. Finally, any determination that the continuing environmental reviews that most of the significant ports in the U.S. have conducted and are continuing to conduct are somehow inadequate to allow installation of this type of processing equipment would

obviously seriously obstruct port development and related growth in U.S. exports. This proposition clearly requires rethinking.

As noted above, DOE/FE's obligation to issue SeaOne's NFTA authorization is non-discretionary: absent a showing that issuance of the order is inconsistent with the public interest, and there has been none, DOE/FE must issue the requested export authorization.

It is clearly inappropriate to suggest that installation of SeaOne's equipment at an existing industrial site, which has undergone extensive environmental review and is covered by extensive current federal and state permitting, as well as an environmental mitigation plan, requires an additional environmental assessment. This is particularly true where the relevant state authority, the Mississippi State Port Authority, sees no reason for such a review and where nothing in the record suggests that such a review is either required or appropriate.

Conclusion

The record in this case, as it currently stands, provides a basis for compelling arguments by proponents of regulatory reform. As the analysis clearly shows, *the Office's staff, having failed to state its position or present evidence at the appropriate time (i.e. prior to closing of the record) and having failed to reopen the record through acceptance of a late, irrelevant and improperly submitted comment as an intervention, is now seeking again to reopen the matter through a spurious reference to NEPA. SeaOne's application should have been granted, without question, in June of 2016 at the latest. Continued delay is inconsistent with the Agency's mission and statements by Agency leadership on the record to Congress and the public. Further, it is illegal and inconsistent with the Administration's firm commitments to assist the Caribbean countries which are SeaOne's customers in their transitions to clean, sustainable energy economies.*

SeaOne Gulfport, LLC - Summary of Request for Assistance

SeaOne is seeking assistance in its efforts to obtain a long-delayed export authorization from the Department of Energy's Office of Fossil Energy ("DOE/FE").

The company has developed a unique proprietary process to produce a hydrocarbon product, Compressed Gas Liquid (CGL®), which is a more flexible and less environmentally intrusive way of transporting and delivering hydrocarbon products. CGL's "custom blend" capability enables delivery of the full range of light petroleum products: from ethane -- for petrochemicals and plastics, to propane -- for home use and vehicle fuels -- to "richer," higher BTU blends of natural gas and NGLs - capable of use in currently existing power plant burners in most Caribbean countries. The deployment of CGL technology will both provide jobs here at home and provide clean and reliable energy for U.S. allies in the Caribbean region.

SeaOne has been working with DOE for over two years to obtain guidance regarding the scope of the Department's jurisdiction over CGL and, for formulations over which DOE asserts jurisdiction, to obtain authorization to export the product to countries in the Caribbean. Unfortunately, guidance has not been forthcoming, and while SeaOne has received authorization to export "natural gas contained in CGL" to Free Trade Agreement ("FTA") countries, SeaOne has now been waiting for well over a year for authorization for exports to non-FTA countries, an authorization that DOE/FE is statutorily required to issue unless it finds that such exports are not consistent with the public interest.

No such finding was made during SeaOne's application process, which was not only unopposed, but which received significant support from customers in the Caribbean. Since the record closed in June of 2016, DOE/FE, after an unsuccessful effort to reopen the proceeding, has continued to slow-walk the process. Most recently, after hearing from Senators, the Governor and the Congressman for the Port of Gulfport, DOE/FE continued their delaying tactics by attempting to impose an unnecessary and unauthorized environmental review requirement on SeaOne's proposed Gulfport facility. DOE/FE has no facility jurisdiction over the Gulfport Facility, and NEPA does not provide DOE/FE with substantive jurisdiction to require such a review. In any event, SeaOne's site at the Port of Gulfport has already undergone extensive and ongoing environmental review, resulting in a Finding of No Significant Impact.

The Office's insistence that it must prepare its own separate, and most likely less complete, environmental review is yet another instance of bureaucratic delay which, in this case, has the adverse environmental impacts associated with failure to timely implement this innovative, more sustainable and urgently needed technology.

SeaOne's CGL project should be a great American success story where hard work and innovation pay off in jobs and tax revenue. It is unfortunate that the Office continues to inappropriately interfere with the fulfillment of these goals. Thank you for your consideration.

SQUIRE PATTON BOGGS

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ATTACHMENT A

August 10, 2016

DOE/FE RESTRICTIONS ON EXPORT OF CGL -- CONSISTENCY WITH U.S. INTERNATIONAL OBLIGATIONS

We have reviewed relevant portions of the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR) and the World Trade Organization (WTO) governing documents with a view towards determining the permissible scope of the re-export restriction included in the U.S. Department of Energy's Order granting approval to export Compressed Gas Liquid (CGL), to Free Trade Agreement Nations in the Caribbean Basin and Gulf of Mexico (DOE Export Approval Order);[1] We have considered this issue in light of the U.S. commitments pursuant to the Caribbean Energy Security Initiative (CESI).

I. Facts

A. The Nature and Characteristics of CGL

CGL is a unique new technology developed by a U.S. company (SeaOne Caribbean LLC or SeaOne) that allows the combination of hydrocarbons derived from oil and gas wells to produce a solution of gas and gas liquids solvated and pressurized to allow storage and transportation at temperatures much higher than the cryogenic temperatures required to liquefy liquid natural gas (LNG). The resulting solvated product is known as Compressed Gas Liquid (CGL™). It is different than LNG in that it can be custom blended to contain either some or essentially the entire hydrocarbon constituents (Natural Gas and Gas Liquids) produced from oil or gas wells, whereas LNG by definition is composed almost entirely of methane.

The non-oil hydrocarbons produced from oil and gas wells generally fall into two categories: "Gas" and "Gas Liquids." Gas is that portion of the hydrocarbons found in a well that is gaseous under the temperature and pressure existing in the reservoir from which it is produced (commonly known as methane or C_1). Gas Liquids (ethane, propane, butane, isobutene, and pentanes, or C_2

[1] DOE/FE Order No. 3555, *Order Granting Long-Term Multi-Contract Authorization to Export by Vessel Natural Gas Contained In or Mixed with Compressed Gas Liquid from the Proposed Pascagoula Compressed Gas Liquid Export Facility to be Located at the Port of Pascagoula, Mississippi, to Free Trade Agreement Nations in the Caribbean Basin and Gulf of Mexico* (Dec. 2, 2014); *see also* DOE/FE Order No. 3555-A, *Order Granting Request to Amend DOE/FE Order No. 3555 to Reflect Changes in Site Location and Corporate Name* (Sept. 25, 2015).

through C_6^+) are liquids under such temperature and pressure conditions.[2] Though they may be gases under normal atmospheric conditions, they are referred to as Natural Gas Liquids, condensates or "NGLs."[3]

The CGL process and resulting technology allows the solvation of hydrocarbons derived from oil and gas wells to produce unique solvated hydrocarbon products that can be economically and safely transported in vessels specially designed for that purpose.[4] The SeaOne CGL process requires a substantial NGL content. Because of this requirement, the product does not meet the specifications for Natural Gas and cannot be transported in a Natural Gas pipeline or in vessels designed to carry LNG.

The different fractions of gas have different uses. LNG consists primarily of methane. Propane liquefies at a fairly high temperature and has many uses, *e.g.,* as fuel for forklifts and other vehicles, for use with grills and camping stoves, etc. Liquid petroleum gas (LPG) is a mixture of propane and butane. The US Agency for International Development's (USAID's) Improved Cooking Technology Project in Haiti has sold more than 50,000 biomass and LPG stoves in order to reduce charcoal usage on that already-deforested island nation. Other higher fractions of gas are commonly used in the manufacture of plastics or as fuels for vehicles. CGL would serve as a new alternative that would provide economic, sustainable and safe product to meet the critical energy needs of the Caribbean territories and nations.

B. Planned Exports of CGL to and Processing in the Dominican Republic

The CGL project developer plans to build solvation, storage and shipping facilities within the Port of Gulfport in Mississippi. The facility will receive customers' fractions of gas and gas liquids for solvation and export and delivery to the Dominican Republic (D.R.). Customers will have their purchased gas and liquid fractions delivered to the measuring facility located at the entrance gate of the CGL Production Facility in the Port of Gulfport via pipelines owned and operated by one or more existing area pipeline company or companies with whom the customer has a capacity agreement. Customers in the Dominican Republic will specify to their D.R.-based commodity producer or wholesaler of hydrocarbon fractions the specific combination of fractions that they plan to buy. The producers and wholesalers may also receive orders from customers in Puerto Rico and various other Caribbean territories and nations for CGL products formulated to meet their specific needs.

The specifications for CGL shipped to the Dominican Republic will, in every case, substantially differ from the products shipped to downstream customers in Puerto Rico or another Caribbean country. ~~(Actual~~(Actual formulations will vary substantially from shipment to shipment depending on customer needs and specifications. While in some instances the shipments received in the D.R. may be composed primarily of NGLs and the downstream shipments contain significant amounts of methane the opposite comparative values could occur in other shipments.)

Again, the customers will arrange for the quantity and combination of hydrocarbons they order to be delivered to the D.R. from the Gulfport CGL production and storage facility and from the

[2] *See, e.g. Mobil Oil Corp. v. FPC*, 483 F.2d 1238 (D.C. Cir. 1973) (discussing the distinction between "liquid" and "liquefiable" hydrocarbons and rejecting the Commission's jurisdiction over the former).
[3] *See, e.g.*, James Tobin et al, "Natural Gas Processing: The Crucial Link Between Natural Gas Production and Its Transportation to Market," Energy Information Administration, Office of Oil and Gas, January 2006. NGLs are also often referred to as "condensates." *Id.* For the purposes of this memorandum, the term NGLs refers to both NGLs and condensates.
[4] Additional information about SeaOne, its technology and its planned facilities and vessels is available on the web site of SeaOne's parent company at http://www.seaonecorp.com/main.php.

D.R. to downstream companies. The Gulfport Production Facility will produce the CGL in the specifications ordered by the D.R commodity producer/wholesaler for shipment to the D.R., and the resulting CGL solution will be transported to the Dominican Republic. On receipt in the D.R., the CGL will be fractionated by the commodity producer/wholesaler to produce products for delivery to customers in the Dominican Republic. The remaining CGL will be stored in the Dominican Republic and later reformulated to meet the specifications of downstream customers.

As can be seen by comparing the above specifications, the later-reformulated CGL that will be delivered to downstream customers will be new and very different products than either the CGL exported from the US or the CGL delivered to the customer in the Dominican Republic.

II. Legality of Restrictions in DOE Export Approval Order

In 2014, the U.S. producer applied to DOE for, and was granted, long-term multi-contract authorization to export domestically produced CGL to Free Trade Agreement nations in the Caribbean basin and Gulf of Mexico.[5] However, the DOE Export Approval Order contained a provision requiring inclusion of the following provision in any agreement or other contract for the sale or transfer of gas contained in or mixed with CGL exported pursuant to the DOE Export Approval Order:

> Customer or purchaser acknowledges and agrees that it will resell or transfer natural gas contained in or mixed with Compressed Gas Liquid (CGL) purchased hereunder for delivery only to countries identified in Ordering Paragraph B of DOE/FE Order No. 3555, issued December 2, 2014 in FE Docket No. 14-83- CGL, and/or to purchasers that have agreed in writing to limit their direct or indirect resale or transfer of such natural gas contained in or mixed with CGL to such countries.[6] Customer or purchaser further commits to cause a report to be provided to SeaOne Pascagoula, LLC that identifies the country of destination, upon delivery, into which the exported natural gas contained in or mixed with CGL was actually delivered, and to include in any resale contract for such product the necessary conditions to ensure that [SeaOne] is made aware of all such actual destination countries.[7]

Literally read, this provision could preclude the shipment of products produced or reformulated from CGL to any but Free Trade Agreement countries. For the reasons set out below, such a reading would be clearly inconsistent with the provisions of the CAFTA-DR governing documents and there is nothing in the Natural Gas Act which allows the imposition of such restrictions. For consistency with US policy and treaties to which the US is a party, products derived from CGL must be freely exportable from the Dominican Republic.

III. U.S. Obligations under the CAFTA-DR Treaty Prohibit DOE from Imposing Re-export Restrictions When the Product Has Undergone a "Substantial Change" in a CAFTA-DR Party.

[5] DOE/FE Order No. 3555 (Dec. n2, 2014). DOE subsequently approved SeaOne's request to amend DOE/FE Order No. 3555 to reflect changes in site location and corporate name. *See* DOE/FE Order No. 3555-A.

[6] Ordering Paragraph B of DOE/FE Order No. 3555 refers to any FTA country located in or adjoining the Caribbean Basin and the Gulf of Mexico, provided that the destination nation has the capacity to import the natural gas contained in or mixed with CGL via ocean going vessels.

[7] DOE/FE Order No. 3555 (Dec. 2, 2014), Order ¶ E.

The U.S. has certain obligations under the CAFTA-DR. Specifically, Chapter Three contains the following provision that distinguishes between permissible and impermissible export restrictions:

> **Article 3.8: Import and Export Restrictions**
>
> 1. Except as otherwise provided in this Agreement, no Party may adopt or maintain any prohibition or restriction on the importation of any good of another Party or on the exportation or sale for export of any good destined for the territory of another Party, except in accordance with Article XI of the GATT 1994 and its interpretative notes, and to this end Article XI of the GATT 3-6 1994 and its interpretative notes are incorporated into and made a part of this Agreement, *mutatis mutandis*.
>
> . . . .
>
> 3. In the event that a Party adopts or maintains a prohibition or restriction on the importation from or exportation to a non-Party of a good, nothing in this Agreement shall be construed to prevent the Party from:
>
> (a) limiting or prohibiting the importation from the territory of another Party of such good of that non-Party; or
>
> (b) requiring as a condition of export of such good of the Party to the territory of another Party, that the good not be re-exported to the non-Party, directly or indirectly, *without being consumed in the territory of the other Party*. [8] [Emphasis added].

Under CAFTA-DR, "consumed" is defined to mean:

> (a) actually consumed; or
>
> (b) further processed or manufactured so as to result in a substantial change in value, form, or use of the good or in the production of another good.[9]

While the above provisions do not apply to certain measures carved out by the CAFTA-DR parties set out in Annex 3.2 to Chapter Three,[10] none of these U.S. exceptions appears applicable to exports of CGL.[11]

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[8] CAFTA-DR, Chapter Three, Article 3.8, available at https://ustr.gov/sites/default/files/uploads/agreements/cafta/asset_upload_file721_3920.pdf.

[9] *Id*. at Article 3.31

[10] *Id.* at Article 3.8(5).

[11] Annex 3.2 provides that, for measures of the U.S., Article 3.8 shall not apply to:

> (a) controls on the export of logs of all species;
>
> (b) (i) measures under existing provisions of the Merchant Marine Act of 1920, 46 App. U.S.C. § 883; the Passenger Vessel Act, 46 App. U.S.C. §§ 289, 292, and 316; and 46 U.S.C. § 12108, to the extent that such measures were mandatory legislation at the time of the accession of the United States to the General Agreement on Tariffs and Trade 1947 (GATT 1947) and have not been amended so as to decrease their conformity with Part II of the GATT 1947;
>
> (ii) the continuation or prompt renewal of a non-conforming provision of any statute referred to in clause (i); and
>
> (iii) the amendment to a non-conforming provision of any statute referred to in clause (i) to the extent that the amendment does not decrease the conformity of the provision with Articles 3.2 and 3.8;
>
> (c) actions authorized by the Dispute Settlement Body of the WTO; and

Thus, under its CAFTA-DR obligations, the U.S. may *only* impose a condition on the re-export of a good exported to a CAFTA-DR party where the good is not "consumed" in the territory of that party. Put another way, if a U.S. good is exported to a CAFTA-DR party, and the good is further processed or manufactured in the territory of that party so as to result in a substantial change in value, form, or use of the good or in the production of another good, the U.S. *cannot* restrict the re-export of the resulting good.

Here, the manufacturer of CGL plans to export CGL to the Dominican Republic. Once in the Dominican Republic, the CGL will be fractionated to provide customers in the Dominican Republic with the combination of gas and gas liquid fractions they require. CGL to be shipped to other territories and countries will be completely reformulated from stored constituents and will consist of a very different mix of hydrocarbons which has been custom formulated to meet the specifications of a separate customer in another Caribbean country. As explained above, under CAFTA-DR the U.S. cannot restrict the export of the reformulated CGL if it has been "consumed" – or substantially changed in value, form, or use – in the Dominican Republic.

IV. Where CGL Has Been "Fractionated" to Produce a Product Ordered by One Customer, and the Remainder Reformulated to Meet the Different Specifications of Another Customer, the CGL Has Been "Substantially Changed."

U.S. Customs and Border Protection (Customs) applies a "substantial transformation" standard in determining the Country of Origin of imported goods. It applies a very similar standard under the Jones Act to determine whether cargo transported from the U.S. in one vessel to a country where the product is processed, then returned to the U.S. must be transported in Jones Act qualified vessels.[12] A review of recent Customs' letter rulings indicates that Customs would consider the fractionating of CGL to produce a product that meets one customer's specifications, with the remaining CGL meeting the very different specifications of a second customer to constitute a "substantial transformation" of the CGL. Further, the "substantial transformation" standard must be, by definition, a more rigorous standard than the "substantial change" standard, as to *transform* something is to *change* it in a particular and more complete way.[13]

It seems well established that the mere regasification of LNG does not result in a new and different product. *See* HQ W116720 (Sept. 12, 2006) and HQ 115762 (Sept. 3, 2002) (LNG from Alaska does not become a new and different product when it is regasified in Mexico). This is hardly a surprising result. While the liquid may have been turned into a gas, the constituents of both are identical.

(d) actions authorized by the Agreement on Textiles and Clothing.

[12] The Jones Act, 46 USC § 55102, generally requires that cargo transported between two U.S. ports be carried on a vessel that is U.S. built, U.S. owned, U.S. flagged and U.S. crewed. Thus, if cargo is transported from the U.S. to a second country, then returned to the U.S., the vessels transporting the cargo must be Jones Act qualified. If the cargo is substantially transformed while outside the US, however, the use of Jones Act qualified vessels is not required.

[13] *See* Merriam-Webster Online Dictionary available at http://www.merriam-webster.com/dictionary/transform.

A more relevant ruling is HQ 116084 (Jan. 12, 2004) in which Customs considered a product that contained 95% butane and less than 1% propane, that was exported to Sweden to be blended with other butane and other gas fractions. The resulting blend contained 69.44% butanes and 27.98% propane. Customs there held that the product blended in Sweden was a new and different product than the one first exported to Sweden and therefore that both the movement to Sweden and the return movement from Sweden to the U.S. could be made on a vessel that was not coastwise-qualified.

Earlier rulings considering the same issue, but in the context of blending liquid hydrocarbons outside of the U.S., appear to hinge on whether there are ASTM standards which apply to the blended product which the individual components alone did not satisfy. *See, e.g.,* HQ 112895 (Feb. 2, 1994) ("[F]uel oil that is loaded at a coastwise point, blended at a foreign port or place, and unloaded at another coastwise point must change ASTM grade to be considered a 'new and different' product for purposes of the coastwise laws").[14]

In its more recent rulings, however, Customs seems to have moved away from an insistence that ASTM standards be used as a benchmark. For example, in HQ H249067 (March 6, 2014) Customs held that the blending of liquid hydrocarbon components in the Bahamas to create Conventional Regular Gasoline Blendstock (CBOB) and Reformulated Blendstock for Oxygenate Blending (RBOB) created a "new and different product" for purposes of the Jones Act even though there were no ASTM standards for either CBOB or RBOB. *See also* HQ H259293 (Jan. 29, 2015) (the blending of blendstock components (including butane) to create gasoline or gasoline feedstocks creates a new and different product for purposes of the Jones Act).

Moreover, there is less or no reason to insist upon the existence of industry-recognized standards when considering regasification and fractionation. Blending of liquids requires little in the way of expensive capital equipment and, as compared to the fractionation of gas, relatively little expertise. In contrast, fractionation and solvation is clearly a manufacturing process requiring sophisticated and relatively expensive capital equipment. Moreover, the products delivered to customers do satisfy exacting standards. Specifically, the products delivered to each customer satisfy the specifications developed by that customer to meet its particular market requirements for fuels.

V. The U.S. CGL Manufacturer's Exports Will Substantially Advance U.S. Energy Policy and Commitments Concerning the Caribbean.

Vice President Biden announced the Obama Administration's Caribbean Energy Security Initiative on June 19, 2014 while on a visit to the Dominican Republic. That announcement was followed by a Caribbean Energy Security Summit held in Washington on January 26, 2015. The Joint Statement issued at the conclusion of the Summit recognizes the important bridging role that alternative hydrocarbon fuels can play in the Caribbean. A paper published by the Atlantic

[14] That same ruling also explains that the approach taken by Customs to determine whether the blending of components creates a new and different product is not the same as the approach taken to determine whether a product has undergone a "substantial transformation" for country of origin marking and other purposes. In other words, a determination by Customs that blending has created a new and different product for purposes of the Jones Act does not necessarily equate to a determination that the blending makes the resulting blended product of the country where the blending took place.

Council the following week offers a more blunt analysis.[15] It notes that Caribbean electricity prices remain about three times higher than those in the U.S. Expensive, high-carbon fuel oil and diesel account for 90-100 percent of electricity generation on many Caribbean islands. Much of it is supplied from Venezuela, a country currently wracked by economic and political crisis. Making additional volumes of natural gas and other hydrocarbon fractions available to Caribbean nations would reduce their dependence on Venezuela and reduce the carbon emissions attendant to their electricity generation.

The CGL producer has indicated that it will be able to deliver its CGL product to Caribbean and Central America nations at a fraction of the cost of LNG, with additional benefits such as lower cost of delivered NGLs and lower emissions. The vessels it has designed to transport CGL are smaller and have less draft than LNG tankers, thereby creating greater flexibility with respect to offloading ports and scheduling. The producer and representatives of SIDS DOCK have met with officials of Caribbean countries and Intergovernmental Organizations, DOE, the State Department and Overseas Private Investment Corporation (OPIC) officials who have all expressed enthusiasm about the company, its technology and the role it might play in meeting some of the goals articulated in the Administration's Caribbean Energy Security Initiative.

Imposition of the restrictions on shipment of products fractionated from CGL and resolvated into different formulations is inconsistent with both the terms of the CAFTA-DR and clearly stated U.S. policies. The restriction is not required by any U.S. law and the restriction in SeaOne's authorization must be read to allow such shipments.

VIII. Conclusion

Due to its obligations under the CAFTA-DR, the U.S. government's ability to impose export or re-export restrictions on goods is extremely limited. The DOE Export Approval Order's export restrictions on CGL exports to NFTA countries are inconsistent with those obligations. The CAFTA-DR prohibits the U.S. from imposing re-export restrictions when a product has undergone a "substantial change" in a CAFTA-DR party. Here, the fractionating of the CGL to produce a product ordered by one customer, leaving CGL that will be reformulated to meet the very different specifications of a second customer clearly constitutes a substantial change and the prohibition on export of that changed product to NFTA countries is prohibited.

[15] *See* http://www.atlanticcouncil.org/blogs/new-atlanticist/three-elephants-in-the-room-the-unfinished-agenda-for-the-caribbean-energy-security-initiative.